

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND

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IN THE MATTER OF:
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Zoning Application Nos. G-862
and G-863

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. SUMMARY

The subject property in this case is a 31-acre tract across the street from the Glenmont Metro Station, slightly north of Georgia Avenue's intersection with Randolph Road, and is currently occupied by a 1960's garden apartment complex. The property was recommended in the 1997 *Glenmont Sector Plan* for high-density, mixed-use, transit-oriented development with about 1,500 dwelling units plus retail. The Sector Plan recommended redevelopment of the site in two stages. Stage 1 was intended to permit the "immediate" development of up to 500 dwelling units and 200 jobs. The plan recommends that the remaining development, in Stage 2, should not proceed until either a grade separated interchange or other transit or transportation improvement is provided that makes the intersection of Randolph Road and Georgia Avenue function at an acceptable level. Currently, that intersection experiences high levels of peak period congestion, with lengthy back-ups in all directions. The proposal for a grade-separated interchange has been in the planning stages for a number of years, but has not yet been funded for construction.

In keeping with the Sector Plan's staging recommendations, the present applicant has submitted two rezoning applications, which divide the property and the proposed development into two stages. The two applications were consolidated for purposes of hearing and this report and recommendation. The Planning Board and its Technical Staff recommend approval of both zoning applications.

These cases have had a high level of community participation. Some community members are entirely opposed to the applications, while others support the redevelopment in concept but would like to see lower density and smaller buildings. The two major issues for the community are compatibility with the existing culture and community of Glenmont, and traffic. The testimony painted a picture of Glenmont as an area of modest single-family homes and older garden apartments with limited retail options, a high-traffic Metro station, serious traffic congestion, and, despite all the pressures of the Metro and the traffic, a real sense of community. Many community participants in these cases are concerned that a new, more expensive, high-density development will weaken the sense of community by bringing in people with higher incomes, who will have nothing in common with

current Glenmont residents, and by constructing buildings that are so large they loom over the existing structures. The Hearing Examiner is persuaded that the community's concerns in this regard are misplaced, and that carrying out the Sector Plan's recommendation – which these applications would do – would be a benefit to the Glenmont community.

The more difficult issue is traffic congestion at the intersection of Georgia Avenue and Randolph Road. Some Glenmont-area residents think the grade-separated interchange will solve Glenmont's problems. Others believe it will destroy the visual center of the community, encourage even more traffic, and worsen already dangerous pedestrian circulation problems. The grade-separated interchange was much discussed during these proceedings, and full funding of it is one of the events that would allow Stage 2 to proceed, assuming the rezonings are granted. However, the Local Area Transportation Review Guidelines, which prescribe how traffic studies are prepared in this County, do not permit a developer to rely on a government-provided roadway improvement unless it is fully funded for construction within four years. As a result, the Applicant has proposed at-grade improvements to the Georgia Avenue/Randolph Road intersection, and all of its traffic mitigation evidence is based on those improvements. Accordingly, the District Council must evaluate these applications based on the at-grade intersection improvements as the proposed traffic mitigation.

The Hearing Examiner finds that the Applicant has not met its burden of demonstrating that the proposed development would not have an adverse impact on local traffic conditions. The submitted traffic study finds that adverse traffic impacts would be mitigated by proposed intersection improvements that would result in Critical Lane Volumes ("CLVs") at Georgia Avenue and Randolph Road below the congestion standard for the Glenmont Metro Policy Area. The same study found, however, that the intersection of Georgia Avenue and Randolph Road *currently* operates at an acceptable level, because the CLVs are below the standard. Undisputed evidence established that in fact, the intersection experiences severe congestion and long back-ups during the peak periods, and cannot reasonably be considered to be performing at an acceptable level. This leads the Hearing Examiner to conclude that in this case, CLV analysis failed to accurately assess current traffic

conditions. Its conclusions about mitigation, therefore, are based on a faulty premise and are not persuasive.

Apart from the traffic impact issue, the Hearing Examiner finds that the proposed development would be consistent with the Sector Plan, compatible with the surrounding area, in compliance with the purpose and requirements of the TS-R Zone and in the public interest. Accordingly, the Hearing Examiner recommends that the present applications be **remanded** to the Hearing Examiner to give the Applicant the opportunity to present additional evidence (i) concerning traffic conditions at the intersection of Randolph Road and Georgia Avenue, such as a queuing analysis; (ii) to show what steps the Applicant is willing to take to mitigate its traffic impacts, which may include but need not be limited to the at-grade improvements already proposed; and (iii) to demonstrate that the proposed mitigation would prevent adverse traffic impacts on the surrounding area from Stage 1 or the combined Stage 1 and Stage 2 of the proposed Glenmont Metrocenter.

II. STATEMENT OF THE CASE

Application No. G-862, filed on November 29, 2006 by Applicant Glenmont Layhill, LLC, requests reclassification from the R-T 12.5, R-30 and O-M Zones to the TS-R Zone of 23.9 acres of land located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, in the 113th Election District. The tract covered by Application No. G-862 consists of Lots 1 through 49 and Parcels A, B and C in the Glenmont Mews Subdivision, zoned R-T 12.5; part of Parcel A in the Glenmont Park Subdivision, zoned R-30; part of Parcel B in the Glenmont Park subdivision, zoned R-30; Parcel C in the Glenmont Park Subdivision, zoned R-30; Parcel E in the Glenmont Park Subdivision, zoned O-M; parcel F in the Glenmont Park subdivision, zoned R-30; and part of parcel G in the Glenmont Park Subdivision, zoned R-30.

Application No. G-863, filed on the same date by the same applicant, requests reclassification from the R-30 Zone to the TS-R Zone of 7.0514 acres of land adjacent to the land covered by Application No. G-862. The land covered by Application No. G-863 consists of parts of Parcels A, B and G in the Glenmont Park Subdivision, zoned R-30.

The Applicant seeks to develop the combined properties, a total of 30.9 acres referred to in this report as the “subject site” or “subject property,” as a single development. Two separate applications were filed to respond to phasing recommendations for the site that were specified in the applicable sector plan. The two applications separate the subject property into a Stage 1 area (LMA No. G-862) and a Stage 2 area (LMA No. G-863), to give the District Council the option to approve only Stage 1 if it so chooses. At the Applicant’s request, the two cases were consolidated for purposes of the public hearing and this report and recommendation.

The applications were initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) who, in a report dated May 23, 2007, recommended *approval*. See Ex. 68. The Montgomery County Planning Board (“Planning Board”) considered the applications on June 14, 2006 and, by a vote of 4 to 0, recommended *approval*. See Ex. 77. The Planning Board recommendation states that the proposal is in harmony with the recommendations of the applicable sector plan, will be compatible with surrounding developments and is in the public interest. The Planning Board notes that the applicant proposes sufficient rights of way to ensure adequate public facilities such as roads and amenities, preserves open space and provides large amounts of open space for the use of local residents, and provides an appropriate amount of retail for the shopping needs of residents and Metro riders. The Planning Board letter further states that the recommendation to approve both zoning applications at the same time “is made with the knowledge that the final staging decisions must be made at the subdivision-approval stage by the Planning Board. Furthermore, any decision made by the Planning Board at the subdivision-approval stage must comply with the approved Adequate Growth Policy that is approved by the County Council.” Ex. 77 at 2.

A public hearing was originally noticed for May 18, 2007 and later rescheduled, at the request of the Applicant and Technical Staff, to June 26, 2007, to continue on June 29, 2007 if needed. See Ex. 60. The public hearing was convened on June 26, 2007, after proper notice, and continued on June 29, July 16 and July 24, 2007. Evidence and testimony were presented both in support of and in opposition to the applications. The record was held open to accept supplemental

submissions from the Applicant and other parties, and closed on August 21, 2007. It was later reopened to accept into the record a correction to the development plan with three items changed to more accurately reflect the evidence of record. The record was then closed immediately, on October 8, 2007.

III. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Conflicts in the evidence are resolved under the preponderance of the evidence test.

A. Subject Property

The subject property contains a total of approximately 30.9 acres of land located across the street from the Glenmont Metro Station, north of Glenallan Avenue between Layhill Road and Georgia Avenue. The site is slightly north of Georgia Avenue's junction with Layhill Road and its intersection with Randolph Road. Its general location may be seen on the map on the next page.

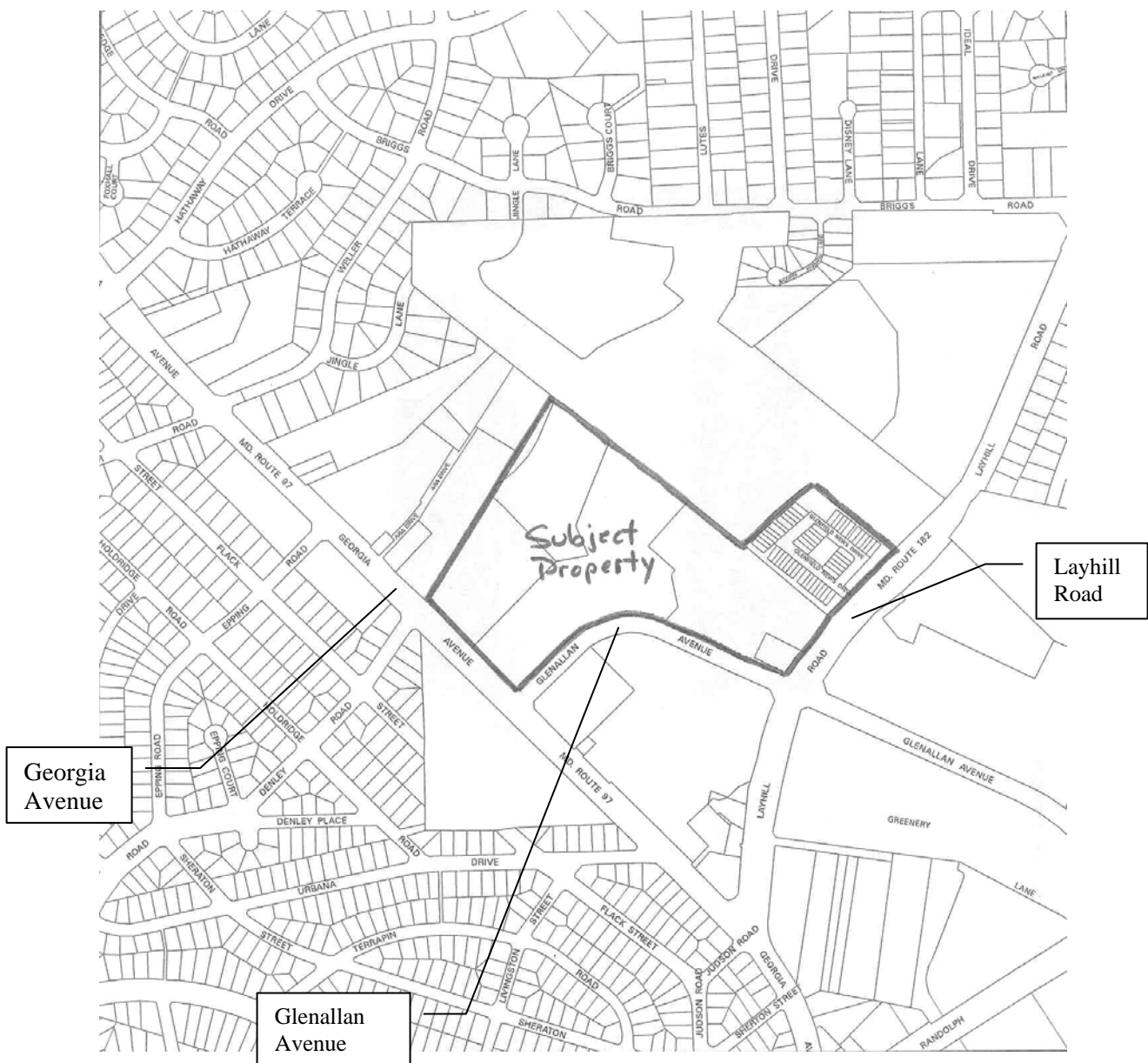
The subject property was developed as a single site during the 1960s, with an apartment complex called "Privacy World." There are currently approximately 352 dwelling units on the site, distributed in about 18 two-and-a-half-story buildings, although the evidence indicates that many units are unoccupied.¹ The buildings are spread out on the site, with parking lots, roads, grass and, particularly in the western half of the site, trees interspersed among them. The site also has playgrounds, paved roads and a pool. The buildings are oriented towards their parking lots, mostly perpendicular to Glenallan Avenue, and virtually the entire site is fenced. The apartments have aged, and the evidence suggests that they are in need of replacement or significant renovation. The evidence also suggests that all of the units can be considered affordable under Montgomery County affordability guidelines.

The subject property is irregularly shaped. The high point topographically is in the southeast corner of the site, at the intersection of Glenallan Avenue and Layhill Road. From that point

¹ The Staff Report states that there are 366 dwelling units, but the Hearing Examiner found the Applicant's more detailed information more credible. A community member testified that the site currently has 219 residents.

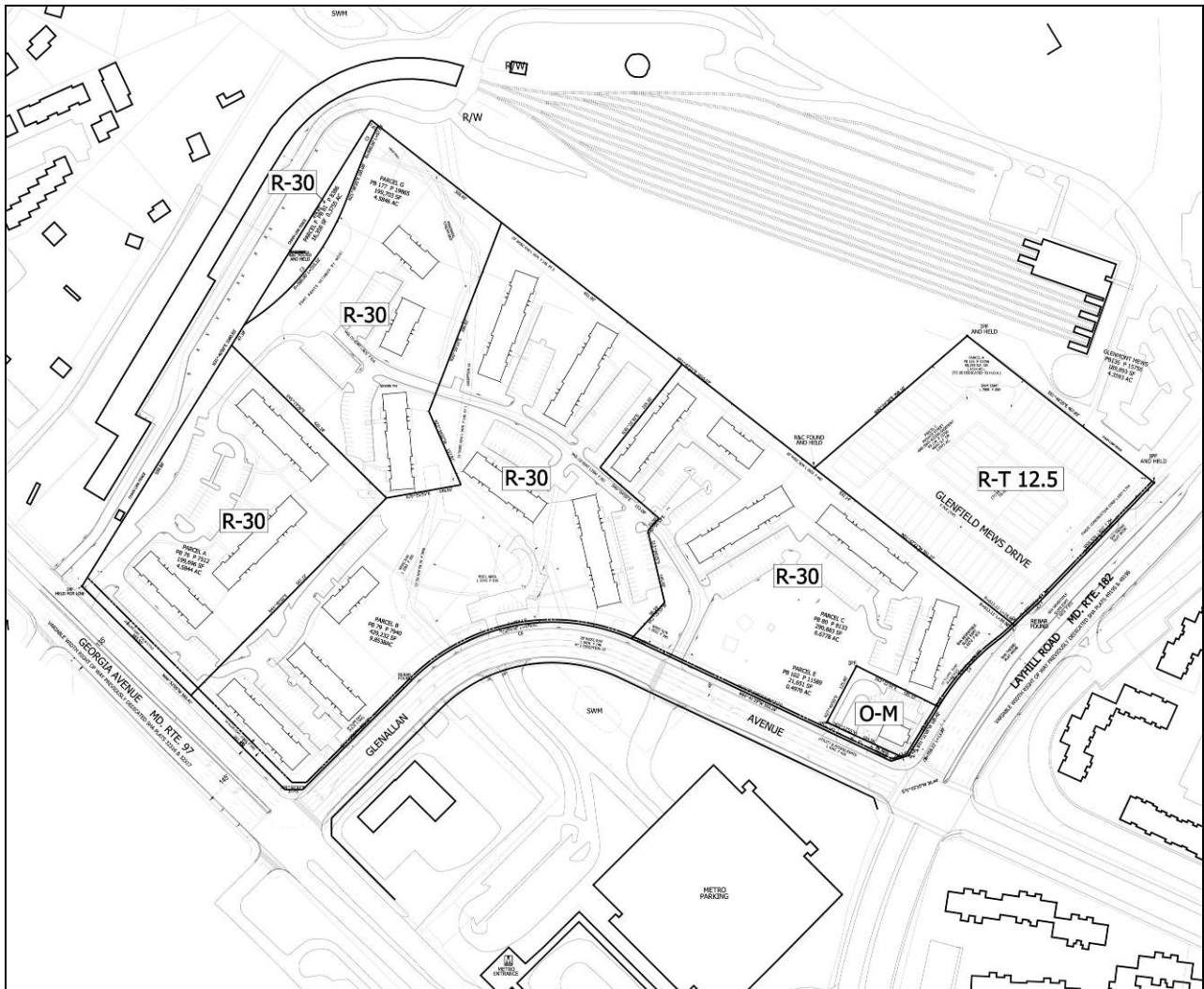
the site slopes down to the west and northwest, reaching its low point where a stream fragment runs through the northwest corner of the site. The only forested areas on the site are in the vicinity of the stream. The site has 114 significant and specimen trees, most of which are in good condition. The present development was built before current environmental standards were developed, and it includes buildings and a road within what today's standards would consider the environmental buffer area for the stream. The vast majority of the site is within a five minute walk of the Glenmont Metro Station, and the entire site is within a ten minute walk.

Vicinity Map, excerpted from Staff Report



The subject site carries three separate zoning classifications. The vast majority of the site is classified under the R-30 Zone (multi-family residential). A 4.3-acre portion in the northeast corner is classified in the R-T 12.5 Zone, having been rezoned for 49 townhouses. The townhouse site plan was not implemented and has expired. It would require a new adequate public facilities review to be renewed. A very small, half-acre portion of the subject site in the southeast corner, at the intersection of Glenallan Avenue and Layhill Road, is classified under the O-M Zone. It is the location of a former bank building, now unoccupied. The site-specific zoning map below shows existing zoning for each part of the site, as well as the locations of existing apartment buildings, roads and parking lots.

Site Specific Zoning Map, Ex. 16(a)



Photos of the subject site follow.

**Intersection of Glenallen Avenue and Layhill Road Looking into Property
Ex. 36(a) Photo 3**



Existing Site Entrance Looking South into WMATA, Ex. 36(a) Photo 4



West Face of Building 18, Along Layhill Road. Ex. 39(a), Photo 22



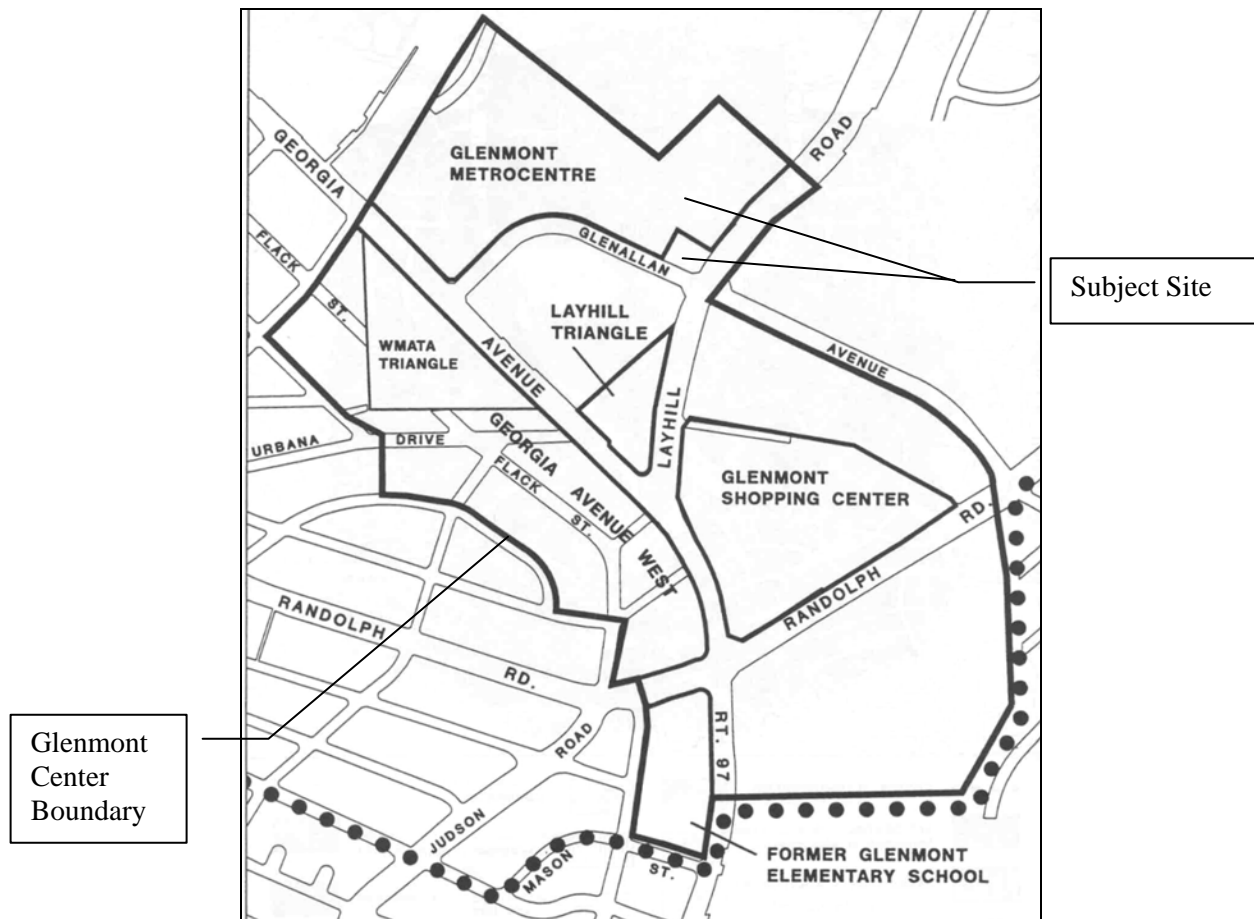
Rear of Building 10, in Environmental Buffer, Ex. 39(a) Photo 19



B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the description of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, the Hearing Examiner accepts Technical Staff’s recommendation (see Staff Report, Ex. 68 at 3) and designates as the surrounding area the area identified as the Glenmont Village Center in the *Sector Plan for the Glenmont Transit Impact Area and Vicinity, Approved and Adopted September 1997* (the “Sector Plan”), p. 21. This area is substantially the same as the “Glenmont Center” area shown on Sector Plan Figure 8, which is reproduced below.²

Glenmont Center Map, Sector Plan Fig. 8, p. 20



² Figure 8 is used here because it reproduces more clearly.

The surrounding area as described above contains a mix of uses and zones. The subject site is bordered to the north and northwest by property owned by the Washington Metropolitan Transit Authority ("WMATA"), and on all other sides by busy roadways. To the northwest is the terminus of the Metro system's Red Line, on land classified under the R-T 12.5 Zone, and to the north is a Metro maintenance/storage yard in the R-90 Zone. There is a sharp drop in grade between the subject site and the WMATA property, and most of the northern edge of the subject site is separated from the maintenance yard by a forested area on WMATA property.

To the east, across Layhill Road, the subject property confronts the Winexburg apartment complex in the R-20 Zone, which has over 600 dwellings on 33 acres. All but one of the buildings has three stories. The complex has the tallest building in the area, with nine stories. This complex, including the tall building, is only partially visible from the street because it sits well below street grade. There is general agreement that from the street, the nine-story building does not appear significantly taller than any of the others. South of the Winexburg complex, across Glenallan Avenue and diagonally confronting the subject site to the southeast, is Glen Waye Gardens, a condominium complex in the R-30 Zone with 214 units in three-story, multi-family buildings on 15 acres of land.

The southern edge of the subject site abuts a stretch of Glenallan Avenue between Georgia Avenue and Layhill Road. On the south side of Glenallan Avenue, confronting the subject site, two-thirds of the road frontage is WMATA property occupied by two Metro driveways, a 1,200-space Metro parking garage and a Kiss and Ride area. The remaining frontage, at the corner of Georgia Avenue and Glenallan Avenue, is occupied by the Georgia Avenue Baptist Church and its parking area. South of the church is additional WMATA property that contains the Metro entrance and a bus loading area. Both the church and the Metro property are zoned R-90. South of the Metro parking garage, where Georgia Avenue intersects Layhill Road, is an area classified under the RMX-2C Zone, occupied by a small commercial building and a gas station.

Confronting the subject site across Georgia Avenue is a vacant, partially paved triangular area classified under the R-T 12.5 Zone and owned by WMATA, which is planned as the site for a second Metro garage with about 1,800 parking spaces.

The aerial photograph below shows the relationship of the subject site to its immediate surroundings. The dashed line through the middle is the line between Stage 1 and Stage 2 of the project, which will be discussed in more detail later in this report.

Aerial Photograph, Ex. 109



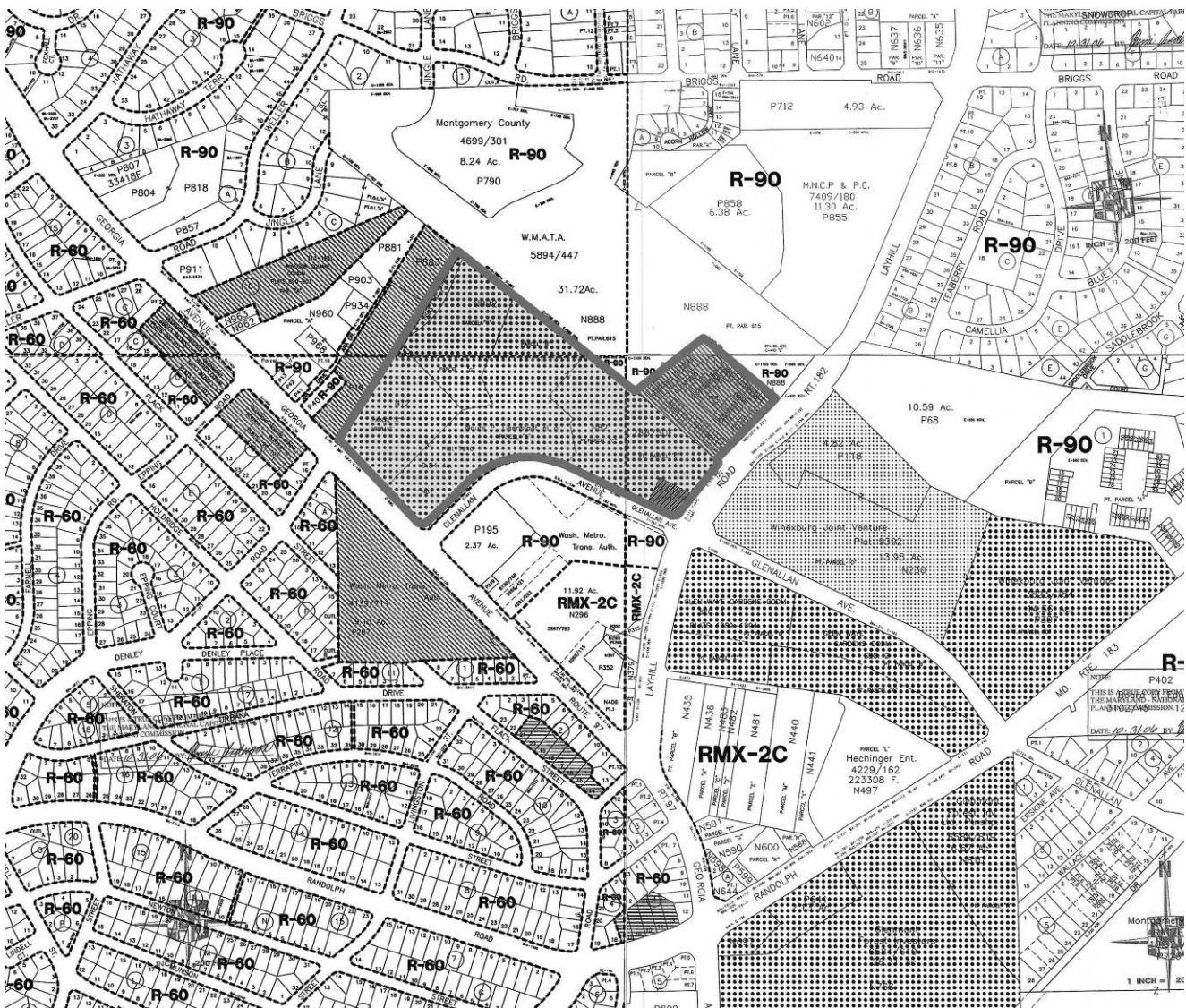
Beyond the adjoining and confronting properties, the surrounding area contains large single-family neighborhoods in the R-60 and R-90 zones, as well as townhouses, apartment buildings and a church on Georgia Avenue. Just south of the proposed WMATA garage site, on the west side of Georgia Avenue, is the Glenmont Greenway, a narrow strip of park land that WMATA originally

bought to have access for construction of the Red Line tunnel. Less than a mile south on Georgia Avenue are Wheaton Library, Wheaton Community Center and Wheaton Regional Park.

Just south of Glen Way Gardens, in the triangle between Glenallen Avenue, Georgia Avenue and Randolph Road is the Glenmont Shopping Center, in the RMX-2C Zone. The Applicant's experts described this shopping center as outdated and badly in need of renovation or redevelopment, but difficult to work with because the underlying property has a number of separate owners. Some community members agreed that the center is outdated, but others said that it reflects the character of Glenmont and meets many of the residents' needs.

Zoning patterns in the surrounding area are reflected on the zoning map below.

Zoning Map, Excerpted from Ex. 15



Photographs of some of the land uses surrounding the subject property follow.

Glenallen Avenue Looking West from Site Entrance. Ex. 37(a) Photo 7



Unoccupied Bank Building in Southeast Corner of Site. Ex. 101, Photo 7



Four-Story Metro Garage Section. Ex.101, Photo 2



Metro Garage Stairwell. Ex. 101, Photo 4



Two-Story Section of Metro Garage, Closest to Glenallan Avenue. Ex. 101, Photo 3



C. Zoning History

The subject property was classified under the R-90 Zone when the zone was enacted and mapped in the 1954 Regional District Zoning.³ The 1958 County-wide Comprehensive Zoning confirmed the R-90 zoning of the site. Between 1963 and 1984 the District Council granted reclassifications of various portions of the site:

Application No.	Net Area	Zone Change	Date Adopted
C-965	26.926 acres with frontage on both Georgia Avenue and Layhill Road.	R-90 to R-30	05/21/63
E-122	2.54 acres with frontage on Layhill Road (Norwood Road)	R-90 to R-30	02/02/65
E-113	0.44 acre with frontage on Layhill Road (Norwood Road)	R-90 to R-30	02/02/65
E-691	1.68 acres (roadbed of former P-9) with frontage on Glenallan Avenue	R-90 to R-30	02/08/66
F-945	0.50 acre at the corner of Glenallan Road and Layhill Road	R-30 to O-M	06/1976
G-410	4.359 acres with frontage Layhill Rd.	R-90 to RT-12.5	05-22-84

The 1978 Sectional Map Amendment for the Glenmont Transit Area retained the site's existing R-90 and O-M zoning.

D. Proposed Development

The Applicant proposes to create a mixed-use neighborhood with up to 1,550 dwelling units and 90,000 square feet of retail, although the Applicant's representative at the hearing testified that with the height limits to which the Applicant has agreed, the total number of units is likely to be less than 1,550. The dwelling units would be made up of townhouses, low-rise and mid-rise multi-family buildings, multi-family dwellings over retail, and possible live/work units.⁴ The Applicant anticipates that if the full 1,550 units are built, the breakdown of dwelling unit types will be 190 to 250 townhouses and 1,300 to 1,360 multi-family units. The overall residential density proposed for the site is 50.4 dwelling units per acre, including a 19.3 percent MPDU bonus. This is just under the maximum residential density recommended in the Sector Plan.

³ The Hearing Examiner hereby takes official notice of the County's zoning maps and rezoning records for this section of the report.

⁴ The idea of live/work units, such as townhouses with first-floor space for a small business, was suggested by community members at a public meeting.

The project is proposed in two stages, in keeping with phasing recommendations in the Sector Plan. Stage 1 would consist of up to 500 new dwelling units (the maximum recommended for Stage 1 in the Sector Plan), the replacement of up to 275 existing dwelling units, and approximately 4,000 square feet of retail space (well within the Sector Plan recommendation for up to 200 jobs in Stage 1). In addition, 77 existing units on the Stage 2 portion of the site would remain in place through Stage 1. Thus, at the end of Stage 1, the subject property would have a total of up to 852 dwelling units (500 new, 275 replacement and 77 existing). Stage 2 would consist of replacing the 77 remaining older units and constructing up to 698 new units, for a total of up to 775 units in Stage 2, and up to 1,550 dwelling units in the new community as a whole. Stage 2 would also add retail (and possibly commercial) space up to 90,000 square feet. The Applicant is very comfortable with 90,000 square feet of retail in the combined project, since the total of 1,550 units could theoretically support 70,000 square feet of retail by itself, without factoring in the existing community.

After extensive negotiations with several community representatives, the Applicant has committed to limit building heights as follows: a maximum height anywhere on site of seven stories or 85 feet; maximum height at the corner of Layhill Road and Glenallan Avenue of 65 feet; and a maximum height on the rest of Layhill Road of 50 feet. These height limits were negotiated after the Planning Board's consideration of the applications, and are lower than the maximum height of ten stories that was presented to the Planning Board. The height limits are lower on Layhill Road in response to community concerns about the prominence of the corner of Layhill Road and Glenallan Avenue, which is the highest topographic point in the area, as well as compatibility with three-story apartment buildings located across Layhill Road from the site.

The Applicant has committed to provide the required 12.5 percent MPDUs on site during Stage 1 of the development. If Stage 2 is built, the percentage of MPDUs on site may rise to 14.5 percent. The preliminary bedroom count anticipates 520 one-bedroom units, 780 two-bedroom units and 250 units with three or four bedrooms. Only a small amount of retail space is planned during Stage 1, approximately 4,000 square feet. The bulk of the planned 90,000 square feet would be built during Stage 2. All of the retail space is proposed to be along Glenallan Avenue, where it

would be most visible and most open to the larger Glenmont community. The Applicant has included commercial space as a possible use in some buildings on Glenallan Avenue. This is in response to a request from community members for live/work space, and is expected to be a very small component of the development.

A stream fragment runs through the northern corner of the site, and that part of the site is proposed to be reclaimed and preserved as an environmental buffer. The existing buildings and roadway in that part of the site would be removed, and additional trees would be planted in their place. The Applicant proposes to make the environmental buffer a visual amenity at one end of a large open space in the middle of the site, stretching from Glenallan Avenue to the northern corner of the site. The Applicant also plans to have smaller open spaces, of varying sizes and configurations, in several locations on site. These are part of a site design that uses an interconnected framework of small, walkable blocks with multiple building types and a mix of uses and public spaces.

Pursuant to Code § 59-D-1.11, development under the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. This development plan must contain several elements, including a land use plan showing site access, the general build and height of proposed buildings and structures and their relationship to one another and to adjacent areas, gross floor area of buildings by type of use, floor area ratio ("FAR") of buildings, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. As a general matter, the development plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual, and the site plan approved by the Planning Board must conform to all non-illustrative elements of the development plan approved by the District Council. See Code § 59-D-1.2. The Zoning Ordinance specifies that in the TS-R Zone, building height is to be determined not at the zoning stage, but during site plan review. Code § 59-C-8.51. A maximum height may be established on the development plan, but exact building heights cannot be set at this stage.

The principal component of the development plan in this case is a document entitled “Development Plan (Land Use Plan),” Exhibit 144(a), hereinafter referred to as the Development Plan, which contains a drawing of the proposed site layout as well as extensive notes, tables and written binding elements. Additional items required for a development plan have been submitted in the form of vicinity maps (e.g. Exs. 15, 62(n) and 109), a preliminary forest conservation plan (Exs. 102(a) through (e)) and a natural resources inventory/forest stand delineation (“NRI/FSD”) (Ex. 19).

The site layout shown on the Development Plan in this case divides the site into development blocks, lettered A through H. The development blocks identify the general location and size of buildings while leaving exact building footprints to be developed during site plan review. Six of the development blocks, Blocks A, B, C1, C2, D and E, are shown with large grey building-shapes, suggestive of mixed use or multi-family structures. The remaining three development blocks, Blocks F, G and H, are shown with smaller, rectangular grey shapes on them, suggestive of townhouses. In reality, the graphic depictions are not fully accurate for Blocks E and F due to an unresolved dispute between the Applicant and Technical Staff as to whether these two blocks should be developed with townhouses or multi-family buildings.

The Applicant would prefer to put townhouses on Block F and multi-family buildings on Block E, for at least three reasons. First, Block F is at the high point of the site, so putting taller buildings on it would emphasize their height.⁵ Second, this location is across the street from three-story apartment buildings in the Winexburg complex, and diagonally across from the two-and-a-half-story Glen Way Condominiums. Townhouses would be closer in height to these buildings than mid-rise multi-family buildings. Third, the Sector Plan specifically recommends placing taller buildings towards the back of the site, where they will not overshadow existing residences.

Several community members who testified, as well as the People’s Counsel, focused considerable attention on this issue, arguing forcefully that taller buildings should be at the back of the site and lower buildings on Block F.

⁵ Townhouses would likely have three or four stories, whereas the multi-family buildings would likely be taller.

As described by the Applicant, Technical Staff advocates putting multi-family buildings on Block F so that the entire Glenallan Avenue frontage of the development would consist of multi-family buildings. Staff also argues that multi-family buildings would be more appropriate at this location because of the proximity of the Metro garage, which is directly across Glenallan Avenue. If the Stage 1 rezoning is granted, the question of which use or uses will be placed on Blocks E and F will be resolved during site plan review. The Development Plan permits either use, or a combination, on both Blocks E and F. It should be noted that during the course of the public hearing in this case, the Applicant agreed to requests from community members for assurances about building heights along Layhill Road. These agreements are memorialized in a binding "Development Block Analysis" on the Development Plan, which specifies a maximum height on Layhill Road in Block F of 65 feet. The rest of Block F, like most of the site, has a maximum building height of 85 feet.

The Development Plan shows the location of the "Proposed Stage Line" between Stage 1 (LMA No. G-862) and Stage 2 (LMA No. G-863). The Sector Plan recommended a limit on the number of dwelling units and jobs created in Stage 1, but did not offer any indication as to which part of the land area should be in which stage. The Applicant has chosen to place more than half of the tract in Stage 1, including the entire Layhill Road frontage, slightly more than half of the Glenallan Avenue frontage and the entirety of the environmental buffer area at the rear of the site. Stage II would contain three building blocks: Block A, Block B and Block C1. These would occupy the entire Georgia Avenue frontage and nearly half of the Glenallan Avenue frontage.

The entire Development Plan is depicted on the next page. Due to the difficulty of reading it at this scale, its components are reproduced separately on the pages that follow, beginning with the graphic portion of the Development Plan on page 24. The next graphic, on page 25, is an illustrative drawing showing what the Development Plan might look like with townhouses on Block E and a combination of townhouses and multi-family buildings on Block F. The extensive notes, tables and textual binding elements shown on the Development Plan, which are essential to understanding the plan, are explained and reproduced beginning on page 26

LEGEND

- Development Block
- Environmental Buffer

TABLE 1: SITE INFORMATION

Block	Area (Acres)	Volume (cu yd)	Height (ft)	Volume (cu yd)	Height (ft)
A	1.2	1,200,000	100	1,200,000	100
B	1.5	1,500,000	100	1,500,000	100
C	1.8	1,800,000	100	1,800,000	100
D	2.1	2,100,000	100	2,100,000	100
E	2.4	2,400,000	100	2,400,000	100
F	2.7	2,700,000	100	2,700,000	100
G	3.0	3,000,000	100	3,000,000	100
H	3.3	3,300,000	100	3,300,000	100

TABLE 2: ZONING INFORMATION

Block	Zoning	Setback (ft)	Height (ft)	Volume (cu yd)	Height (ft)
A	Residential	10	100	1,200,000	100
B	Residential	10	100	1,500,000	100
C	Residential	10	100	1,800,000	100
D	Residential	10	100	2,100,000	100
E	Residential	10	100	2,400,000	100
F	Residential	10	100	2,700,000	100
G	Residential	10	100	3,000,000	100
H	Residential	10	100	3,300,000	100

TABLE 3: ENVIRONMENTAL DATA

Block	Area (Acres)	Volume (cu yd)	Height (ft)	Volume (cu yd)	Height (ft)
A	1.2	1,200,000	100	1,200,000	100
B	1.5	1,500,000	100	1,500,000	100
C	1.8	1,800,000	100	1,800,000	100
D	2.1	2,100,000	100	2,100,000	100
E	2.4	2,400,000	100	2,400,000	100
F	2.7	2,700,000	100	2,700,000	100
G	3.0	3,000,000	100	3,000,000	100
H	3.3	3,300,000	100	3,300,000	100

Developmental Checklist in Reading				
Developmental	Use Types	Age in Months	Range of Connections	Approximate Number of Connections
1	None	12-20	32-38	25
2	None	20-25	38-45	25
3	None	25-30	45-50	25
4	None	30-35	50-55	25
5	None	35-40	55-60	25
6	None	40-45	60-65	25
7	None	45-50	65-70	25
8	None	50-55	70-75	25
9	None	55-60	75-80	25
10	None	60-65	80-85	25
11	None	65-70	85-90	25
12	None	70-75	90-95	25
13	None	75-80	95-100	25
14	None	80-85	100-105	25
15	None	85-90	105-110	25
16	None	90-95	110-115	25
17	None	95-100	115-120	25
18	None	100-105	120-125	25
19	None	105-110	125-130	25
20	None	110-115	130-135	25
21	None	115-120	135-140	25
22	None	120-125	140-145	25
23	None	125-130	145-150	25
24	None	130-135	150-155	25
25	None	135-140	155-160	25
26	None	140-145	160-165	25
27	None	145-150	165-170	25
28	None	150-155	170-175	25
29	None	155-160	175-180	25
30	None	160-165	180-185	25
31	None	165-170	185-190	25
32	None	170-175	190-195	25
33	None	175-180	195-200	25
34	None	180-185	200-205	25
35	None	185-190	205-210	25
36	None	190-195	210-215	25
37	None	195-200	215-220	25
38	None	200-205	220-225	25
39	None	205-210	225-230	25
40	None	210-215	230-235	25
41	None	215-220	235-240	25
42	None	220-225	240-245	25
43	None	225-230	245-250	25
44	None	230-235	250-255	25
45	None	235-240	255-260	25
46	None	240-245	260-265	25
47	None	245-250	265-270	25
48	None	250-255	270-275	25
49	None	255-260	275-280	25
50	None	260-265	280-285	25
51	None	265-270	285-290	25
52	None	270-275	290-295	25
53	None	275-280	295-300	25
54	None	280-285	300-305	25
55	None	285-290	305-310	25
56	None	290-295	310-315	25
57	None	295-300	315-320	25
58	None	300-305	320-325	25
59	None	305-310	325-330	25
60	None	310-315	330-335	25
61	None	315-320	335-340	25
62	None	320-325	340-345	25
63	None	325-330	345-350	25
64	None	330-335	350-355	25
65	None	335-340	355-360	25
66	None	340-345	360-365	25
67	None	345-350	365-370	25
68	None	350-355	370-375	25
69	None	355-360	375-380	25
70	None	360-365	380-385	25
71	None	365-370	385-390	25
72	None	370-375	390-395	25
73	None	375-380	395-400	25
74	None	380-385	400-405	25
75	None	385-390	405-410	25
76	None	390-395	410-415	25
77	None	395-400	415-420	25
78	None	400-405	420-425	25
79	None	405-410	425-430	25
80	None	410-415	430-435	25
81	None	415-420	435-440	2

[illegible]

Development Block Analysis (Binding)

Illustrative Alternative Plan, Ex. 96
Shows Townhouses on Block E and Multi-Family Plus Townhouses on Block F.



The Development Plan specifies several elements that are expected to be finalized during site plan review. These are listed in the table below.

Anticipated Site Plan Refinements, excerpted from Ex. 144(a)

Anticipated Site Plan Refinements

1. Final modifications to the size and shape of the Development Blocks.
2. Final unit count/ unit mix including the number and percentage of MPDUs and amount of retail/commercial uses.
3. Final building locations within each Development Block.
4. Specific building heights and setbacks.
5. Final number of parking spaces.
6. Final location of access points, internal road network and pedestrian links.
7. Final determination of landscaping, streetscaping, recreation space, open space calculations and lighting.
8. Further refinement of the arrangement for the perpetual maintenance of open space areas and other areas used for recreational, common, or quasi-public purposes.
9. Articulation of buildings along the street edge.

The Development Plan includes table below, which sets forth, for each of the development blocks, the types of uses that are permitted, an approximate range for the number of dwelling units, a square footage range for retail or commercial, a permitted range of building heights, and approximate street setbacks. This table establishes several parameters for the proposed development that are essential in assessing its compatibility with the surrounding area. The height limits are of particular importance to community members who negotiated them with the Applicant.

Development Plan Analysis (Binding), excerpted from Ex. 144(a)

Development Block Analysis (Binding)							
Development Block	Use Types	Approximate Range of Units (2)	Range of Retail / Commercial(SF)	Height Ranges	Approximate Setbacks (Curb to Building)		
					Georgia Ave.	Glenallen Ave.	Layhill Road
							Internal Streets
A	Multi Family/Retail/Comm.	190-280	50,000-70,000	50' - 85'	25'	25'	15'
B	Multi Family/Retail/Comm.	150-280	16,000-36,000	50' - 85'		25'	15'
C1	Multi Family/Comm.	90-280		45' - 85'	25'		15'
C2	Multi Family	120-280		45' - 85'			15'
D	Multi Family/Retail/Comm.	220-260	2,000-4,000	50' - 85'		25'	15'
E	Multi Family/Townhouse	40-220		35' - 85'			15'
F(1)	Multi Family/Townhouse/Comm.	90-200		35' - 85'		30'	15'
G	Townhouses	65-95		35' - 50'			15'
H	Townhouses	20-30		35' - 50'			15'

Note : 1. Maximum Height along Layhill Road is 65'.

2. +/-10% Variance pursuant to Binding Element #2

The textual binding elements, reproduced below, provide additional parameters and limitations for the development, including an important staging provision.

Textual Binding Elements, excerpted from Ex. 144(a)

1. The Development Plan contains "Development Blocks" which identify those areas of the property that will be developed. Within these Development Blocks, the plan reflects product type, density of the development, general building locations, open space, landscaping and recreation areas and parking spaces. The Development Block Analysis identifies:

- a. The Development Block.
- b. Use types.
- c. Approximate range of units.
- d. Approximate range of Retail/Commercial.
- e. Height Ranges.
- f. Approximate setbacks from curb to face of buildings.

The precise location, building footprints and square footages of the buildings, and open space, landscaping and recreation space within each Development Block as well as the actual number of parking spaces will be decided at site plan. Minor modifications to the size and shape of the Development Blocks may be made at the time of site plan.

2. The total number of units on the property for Stage 1 and Stage 2 combined shall not exceed 1550 dwelling units including MPDUs (up to 14.5% of the total number of units based on 1550 dwelling units) with no more than 500 new units to be approved as part of Stage 1 of the development (existing units that are replaced with new units do not count toward the 500 unit cap requirement for Stage 1). Stage 1 shall include 12.5% MPDUs. The total number of residential units (including the total number of MPDUs in the development and the percentage requirement of MPDUs as contained in Chapter 25A of the Montgomery County Code) and the amount of retail/commercial uses will be determined at site plan. Units may be shifted between Development Block areas so long as: (i) The range of units within each Development Block does not vary by more than 10% and (ii) The total number of units in the entire development does not exceed 1550. The total amount of retail/commercial shall not exceed 90,000 square feet and will be within the range shown on the Development Block Analysis.
3. At the time of preliminary plan of subdivision approval, the Applicant shall submit for Planning Board review and approval, a revised Local Area Transportation Review analysis that re-evaluates Stage 2 of the development so that the Planning Board can make a determination whether the Georgia Avenue/Randolph Road intersection will function at an acceptable level of service to permit all or a portion of Stage 2 to move forward pursuant to the County's established rules and procedures for determining the adequacy of public facilities.
4. No building permit applications for Stage 2 of the development will be applied for until either a grade separated interchange is fully funded for construction or other transit or transportation improvements are under construction that would make the intersection of Randolph Road and Georgia Avenue function at an acceptable level as determined by the Montgomery County Planning Board. The Applicant may incorporate the following mitigation measures as part of the subdivision application: physical roadway improvements, pro rata payments toward the programmed Georgia Avenue/Randolph Road interchange, Local Area Transportation Review mitigation measures (e.g., real-time transit signs, pedestrian count-down signals, bike racks, etc.), transit enhancements/incentives, establishing a neighborhood circulator shuttle, pedestrian safety measures and/or other improvements.
5. No building shall exceed 7 stories or 85 feet as measured pursuant to the Montgomery County Zoning Ordinance.
6. All private roads shall meet the Montgomery County standards required for emergency vehicle access.
7. No structures or impervious surfaces shall be located within the Environmental Buffer.
8. The Glenmont Sector Plan, adopted September 1997 (the "Sector Plan") recommends a maximum base density for the entire property of 42 units per acre, which results in a maximum density of 51 units per acre with MPDUs. As shown, Stage 1 reflects a maximum density of 32.45 units per acre with MPDUs and Stage 2 reflects a maximum density of 119.40 units per acre with MPDUs. Collectively, the maximum density for Stage 1 and Stage 2 is 50.1 units per acre with MPDUs, in conformance with the Sector Plan density of up to 51 units per acre.
9. Subject to Textual Binding Element Note 4, the completion of any portion of the project is not necessary to commence any subsequent portion of the project.

In addition to the Development Block Analysis and the textual binding elements, the Development Plan includes binding design principles that are intended to demonstrate the Applicant's commitment to carrying out the Sector Plan's vision for this property. Many of the items respond directly to specific objectives stated in the Sector Plan.

Binding Design Principles for Glenmont Metrocenter, excerpted from Ex. 144(a)

Binding Design Principles for Glenmont Metrocenter

1. Pedestrian Oriented Streets

- The neighborhood street system shall be continuous and interconnected where practical.
- Neighborhood streets shall be arranged to define the Development Blocks and to create blocks that encourage walkability.
- Parking shall be provided on streets (parallel spaces) where practical, and in parking decks and/or parking garages and driveways.
- Neighborhood streets that radiate from the new "Neighborhood Main Street" shall provide safe and adequate access to Metro.
- Glenallan Avenue shall have on-street parallel parking subject to the approval from the Montgomery County Department of Public Works and Transportation and the Montgomery County Department of Permitting Services.
- All streets shall have a minimum five foot wide sidewalk dimension continuous on both sides of the street. Sidewalk dimensions shall be increased to accommodate the needs of abutting retail uses such as cafe seating.
- All streets shall have a street tree zone separating the sidewalk from the curb on both sides of the street.
- All street trees shall be placed in a continuous lawn panel, landscaped panel or in tree pits.

2. Public Open Space Elements

- A major central public use space for the enjoyment of the residents and the greater Glenmont community shall be located between Blocks B and D. The space will contain a variety of seating opportunities, passive recreation opportunities, a multi-use lawn area and a focal design element.
- A naturalized park edge shall be located adjacent to the delineated stream valley buffer. This edge may include an environmental education component that shall be made available to the greater Glenmont community.
- A major public use space for the enjoyment of the residents and the greater Glenmont community shall be located in the vicinity of Blocks F, G and H. The space will be predominantly landscaped with seating opportunities and passive recreation opportunities.
- Minor open spaces will be distributed throughout the project and will be diverse in terms of size, function and type.
- To the extent practical, open space areas shall incorporate on-grade rain water bio-filtration strategies.

3. Architectural Elements

- Building front entrance(s) shall front onto the street(s).
- Special architectural treatments shall occur at the terminus of vistas or deflected views along a street.
- Garage access for townhouse units shall be primarily rear-loaded and served by alleys.

The "Site Analysis" table reproduced below and on the next page addresses development standards such as density, area of dedication, number of units, FAR, approximate bedroom count, open space and parking. The figures in these tables are approximate.

Site Analysis Stage 1 and 2, excerpted from Ex. 144(a)

SITE ANALYSIS STAGE I AND II					
ZONING					
Existing Zoning:		R-30, R-T12.5 and O.M.			
Proposed Zoning:		TS-R			
Base Density - 42 units/acre x 30.9324 = 1,299 units					
Maximum Density - 1550 units/30.9324 acres = 50.1 units/acre					
GROSS TRACT AREA					
Gross Tract Area		30.9324		Ac	1,347,415 SF
Area of Dedications		0.5723		Ac	24,929 SF
Area of Non Dedications (Master Plan Street)		2.8057		Ac	122,216 SF
Net Lot Area					
		27.5540		Ac	1,200,252 SF
STAGE AREA (GROSS)					
Stage 1		23.8810		Ac	1,040,256 SF
Stage 2		7.0514		Ac	307,159 SF
UNIT TYPE					
Maximum Proposed: (As Shown)		1,550		units	
TownHomes - Block E,F,G,H		190-250		units	
MultiFamily - Block A,B,C1,C2,D,E		1,300-1,360		units	
Maximum Retail/Commercial Proposed (As Shown)		90,000		SF	
FAR					
Maximum FAR Allowed @ 2.5		3,665,010		SF	
Maximum FAR Proposed		Up to	2,500,000	SF	
Residential		Up to	2,410,000	SF	
Retail/Commercial		Up to	90,000	SF	
NUMBER OF DWELLING UNITS (MAXIMUM)					
Market Rate DU		1,325		units	
MPDU'S Up to @ 14.5%		Up to 225		units	
Maximum Number of Dwelling Units		1,325		units	

APPROXIMATE BEDROOM COUNT		
New units		
1 BR	520	
2 BR	780	
3-4 BR	250	
TOTAL	1550	

Site Analysis Stage 1 and 2 cont., excerpted from Ex. 144(a)

MINIMUM BUILDINGS SETBACKS (from Property Line)				
North Side (WMATA)			10 Feet	
East Side (Layhill Rd)			20 Feet	
West Side (Georgia Ave)			10 Feet	
South Side (Glenallan Ave)			0 Feet	
Approximate Open Space as shown				
Net Lot Area (SF)		27.55 Ac	1,200,078 SF	
Required Public Use Space @ 10%		2.76 Ac	120,008 SF	
Provided Public Use Space	16.7 %	4.60 Ac	200,600 SF	
Required Active/Passive Rec. Space @ 25%		6.89 Ac	300,019 SF	
Provided Active/Passive Rec. Space	16.9 %	4.65 Ac	202,700 SF	
Provided Preservation Area	12.1 %	3.33 Ac	145,330 SF	
Provided Indoor Amenities Space	0.7 %	0.18 Ac	8,000 SF	
TOTAL OPEN SPACE AS SHOWN	46.4 %	12.78 Ac	556,630 SF	

PARKING				
Residential Uses				
One Bedroom Units	462 units @ 1.25	Spaces/Unit	578 spaces	
One Bedroom MPDU	80 units @ 0.625	Spaces/Unit	50 spaces	
Two Bedroom Units	697 units @ 1.5	Spaces/Unit	1,046 spaces	
Two Bedroom MPDU	117 units @ 0.75	Spaces/Unit	88 spaces	
Townhome Units	166 units @ 2	Spaces/Unit	332 spaces	
Townhome Units MPDU	28 units @ 1	Space/Unit	28 spaces	
Sub Total Residential Spaces	1,550 units		2,121 spaces	
Less Metro/Plan Credit	-15 %	Less	318 spaces	
Approximate Total Residential Spaces			1,803 spaces*	
Non Residential Uses				
Retail/Commercial	65,000 GSF @ 5 Spaces/1,000 GSF		325 spaces	
Retail/Restaurant	25,000 GSF @ 25 Spaces/1,000 GSF x 0.5		313 spaces	
Sub Total Residential Spaces	90,000 GSF		638 spaces	
Less Metro/Plan Credit	-15 %	Less	96 spaces	
Approximate Total Retail/Commercial Spaces			542 spaces*	
Approximate Total Parking Spaces**			2,345 spaces*	
* Maximum Based Upon 1,550 Units and Potential Uses. Actual to be determined at Site Plan based on final configuration of the type of units within each development envelope.				
** Maximum Based upon Potential Commercial Uses - Actual to be Determined at Site Plan				
Note: Final Dwelling Unit Count/Unit Mix, Bedroom Count, Parking Space Quantity, Retail/Commercial Area, Public Use Space, Recreation Space and Square Footages Will Be Determined at Site Plan Approval.				

The small table shown below specifies the Applicant's proposed roadway dedications, which are required to be shown on a development plan.

Proposed Dedications, excerpted from Ex. 144(a)

Street Name	Master Plan R.O.W	Proposed Dedication required to meet the Master Plan requirements
Georgia Ave	145'	20'
Glenallan Ave	95'	5'
Layhill Road	120'	5'

The Development Plan includes two tables, one for Stage 1 and one for Stage 2, explaining how many units would be built in each phase and demonstrating that each phase would independently meet applicable open space requirements. The Stage 1 table breaks out in detail the basis for the parking calculation. This level of detail is not provided separately for Stage 2 parking, but it is provided for the development as a whole (see p.30 above) and separately for Stage 1. These are shown below and on pages 32 and 33.

Stage 1 Parking Table, from Ex. 144(a)

PARKING STAGE I (Approximate)					
Residential Uses					
Existing Units	77 units @ 1.5	Spaces/Unit		116	spaces
One Bedroom Units	202 units @ 1.25	Spaces/Unit		253	spaces
One Bedroom MPDU	30 units @ 0.625	Spaces/Unit		19	spaces
Two Bedroom Units	305 units @ 1.5	Spaces/Unit		458	spaces
Two Bedroom MPDU	44 units @ 0.75	Spaces/Unit		33	spaces
Townhome Units	170 units @ 2	Spaces/Unit		340	spaces
Townhome Units MPDU	24 units @ 1	Space/Unit		24	spaces
Sub Total Residential Spaces	852 units			1,241	spaces
Less Metro/Plan Credit	-15%		Less	186	spaces
Total Approximate Residential Spaces				1,055	spaces*
Non Residential Uses					
Retail/Restaurant	4,000 GSF @ 25 Spaces/1,000 GSF x 0.5			50	spaces
Sub Total Retail Spaces	4,000 GSF			50	spaces
Less Metro/Plan Credit	-15%		Less	8	spaces
Total Approximate Retail Spaces				42	spaces*
Total Approximate Parking Spaces**				1,097	spaces*

Stage I Development Standards Table, from Ex. 144(a)

DEVELOPMENT PLAN STAGE I				
STAGE AREA (GROSS)				
Stage 1			23.8810 Ac	1,040,256 SF
Stage 1 Density (775 Units / 23.8810 Acres)			32.45 DU / Ac	As Shown
UNIT TYPE				
Maximum Proposed: As Shown			852 units	
Existing Units to remain (In Stage 2 Area)			77 units	
Replacement MultiFamily			275 units	
Subtotal - Existing Units + Replacement Units			352 units	
New Townhomes			190-250 units	
New MultiFamily			250-310 units	
Subtotal New Units			500 units	
Total Units (Existing Units -77+Replacement Units -275 and New Units -500) = 852 units				
Maximum Retail/Commercial Proposed			4,000 SF	
FAR				
Maximum FAR Allowed @ 2.5			2,600,640 SF	
Maximum FAR Proposed			1,300,000 - 1,793,131 SF	
Residential			1,296,000 - 1,789,131 SF	
Retail/Commercial			Up to 4,000 SF	
NUMBER OF DWELLING UNITS (MAXIMUM)				
Market Rate DU			678 units	
MPDU'S @ 12.5%			Up to 97 units	
Existing Units			77 units	
Total Number of Dwelling Units			852 units	
APPROXIMATE BEDROOM COUNT				
New units				
1 BR	209			
2 BR	316			
3-4 BR	250			
TOTAL	775	New Units and Replacement Units		
GROSS TRACT AREA				
Gross Tract Area			23.88 Ac	1,040,256 SF
Area of Dedications			0.23 Ac	10,356 SF
Area of Non Dedications (Internal Master Plan Road)			2.23 Ac	97,495 SF
APPROXIMATE OPEN SPACE AS SHOWN				
Net Area			21.42 Ac	943,117 SF
Required Public Use Space @ 10%			2.14 Ac	94,312 SF
Provided Public Use Space as shown			17.2 %	3.68 Ac
Required Active/Passive Rec. Space @ 25%			5.36 Ac	188,623 SF
Approximate Provided Active/Passive Rec. Space as shown			14.9 %	3.19 Ac
Approximate Provided Preservation Area as shown			15.5 %	3.33 Ac
Approximate Provided Indoor Amenities Space as shown			0.5 %	0.11 Ac
			6.63 Ac	289,150 SF
APPROXIMATE TOTAL OPEN SPACE STAGE I AS SHOWN			48.1 %	10.31 Ac

Stage 2 Development Standards Table, from Ex. 144(a)

DEVELOPMENT PLAN STAGE II					
Site Area (Gross)			6.4910 Ac	307,159 SF	
Density Range (775 / 6.4910)			119.40 DU/AC.		
Stage 2 (77 Existing Units will become Replacement Units)			698 New Units		
			77 Replacement Units		
			775 units		
FAR					
Maximum FAR Allowed @ 2.5			706,869 SF		
Maximum FAR Proposed		Up to	706,869 SF		
Residential		Up to	620,869 SF		
Retail/Commercial		Up to	86,000 SF		
NUMBER OF DWELLING UNITS (MAXIMUM)					
Market Rate DU			657 units		
MPDU'S (15% of 775 Units)			117 units	In Stage II	
MPDU'S (Total to equal Up to 14.5% of 1550 Units)			Up to 128 units	In Stage II	
Total Number of Dwelling Units			775 units		
APPROXIMATE BEDROOM COUNT					
New units					
1 BR	311				
2 BR	464				
3-4 BR	0				
TOTAL	775				
APPROXIMATE OPEN SPACE AS SHOWN					
Net Area			6.13 Ac	267,197 SF	
Required Public Use Space @ 10%			0.61 Ac	26,720 SF	
Approximate Provided Public Use Space as shown		15.1 %	0.92 Ac	40,242 SF	
Required Active/Passive Rec. Space @ 25%			1.53 Ac	66,800 SF	
Approximate Provided Active/Passive Rec. Space as shown		23.5 %	1.46 Ac	63,880 SF	
Approximate Provided Preservation Area as shown		%	Ac	0 SF	
Approximate Provided Indoor Amenities Space as shown		1.1 %	0.07 Ac	3,000 SF	
			1.53 Ac	66,880 SF	
TOTAL OPEN SPACE STAGE 2 AS SHOWN		48.2 %	2.43 Ac	106,122 SF	

The Applicant's land planner, Stephen Gang, described the various Development Blocks identified on the Development Plan, providing some conceptual detail in addition to the binding features identified in the "Development Block Analysis" table. Mr. Gang noted that Block A is intended to be retail on the first floor, except facing Georgia Avenue, with multi-family above and a

height of 50 to 85 feet. 50 feet would be three stories of multi-family over retail. 85 feet would mean six stories of multi-family with pitched roofs, plus retail. Units facing Georgia Avenue would hopefully have entries onto Georgia, to start animating it. The Development Plan calls for setbacks of approximately 25 feet from curb to building for Blocks A, B and D on Glenallan Avenue, which Mr. Gang described as an “urban design” setback – what people see between curb and building, compared to a zoning setback measured from the invisible property line. Mr. Gang testified that this setback area would be paved as part of an urban, retail street setting, with some greenery, and could be partly within the public right-of-way and partly on land retained by the Applicant.

Block B would also have multi-family units with ground floor retail, and building heights of 50 to 85 feet. If the development gets a supermarket, it would be in Block B, which also has the retail parking. The street between Blocks A and B would be a service street, with retail on one side and parking on the other. Mr. Gang explained that retail is proposed close to Georgia Avenue to follow the standard planning maxim of putting the most intense uses and greatest bulk and density along major roads. Layhill Road is wide, but because of its three-story residential buildings, the higher density, height and bulk are planned to transition down from Georgia to Layhill. Mr. Gang observed that the proposed retail location would also allow the highest volume of passers-by to see the retail, and make it more accessible to members of the general community than if it were on an internal street.

Blocks C-1 and C-2 are planned as multi-family buildings. No retail is planned at that location because it is farther from Georgia Avenue. Building heights would be between 45 and 85 feet, which is four to eight stories. Block C-2 would be part of Stage 2. These blocks are shown with a range of 90 to 280 units. Mr. Gang explained that a three or four-story building would likely have 90 units, whereas a seven-story building would likely have 280 smaller units. The range is intended to allow flexibility at site plan to design a variety of unit types and price levels.

Mr. Gang stated that Block D is expected to have the Stage 1 retail in its southwest corner, and a height between 45 and 85 feet. Density would be between 220 and 260 dwelling units plus 2,000 to 4,000 square feet of commercial. Mr. Gang described Block E as one of the “swing

blocks,” which the Applicant proposes as multi-family and Technical Staff prefers as townhouses. The density would be between 40 and 220 units, and the height could be as low as 35 feet for townhouses or as high as 85 feet for multi-family. Mr. Gang noted that a taller building on Block E would be less noticeable than at other locations on site because there are no land uses nearby other than the Metro maintenance yard, and because it slopes about five percent from east to west, approaching the low point in the stream valley buffer. See Tr. June 26 at 204-205.

The other “swing block” is Block F, at the corner of Layhill Road and Glenallan Avenue, which the Applicant proposes as townhouses and Technical Staff prefers as a combination of townhouses on Layhill and multi-family on Glenallan. The density would be between 90 and 200 units, and the height limit would be 65 feet. With the existing and proposed setbacks, Mr. Gang estimates that the new buildings would be at least 200 feet away from the existing buildings across the street, from face of building to face of building. Mr. Gang opined that either townhouses, multi-family or a combination on Block F would be compatible with nearby residences, noting that townhouses and multi-family are often next to one another, and that multi-family can be made to look like townhouses.

Mr. Gang then moved on to Blocks G and H, in the northeast corner of the site, which are planned for townhouse use. This part of the site is still across Layhill Road from the Winexburg apartment complex, but it is closer to the single-family neighborhoods farther north on Layhill, so townhouses were considered more appropriate. Mr. Gang noted that the area identified as Blocks G and H is classified under the R-T 12.5 Zone and was approved and platted for townhouse development, although the site plan has since expired and would require a new adequate facilities test to be reinstated. Mr. Gang noted that this part of the site has a stand of trees near the Metro repair yard (most of which are, admittedly, not on the Applicant's property), and a steep grade dropping off towards the repair yard. He stated that during his site visits he has never heard the trains coming into the repair yard because they are traveling so slowly at that point. He noted that the Development Plan shows a road between the northernmost row of townhouses and the property line, and if necessary a wall, noise berm or trees could be installed in that corner.

E. Sector Plan

The Sector Plan covers a small area, by master plan standards – approximately 568 acres. Glenmont is one of five sector plan areas lying within the boundaries of the Kensington-Wheaton Planning Area. The Planning Board found that the proposed development would be in harmony with the recommendations of the Sector Plan and recommended approval of the rezoning. See Ex. 77. Technical Staff opined that the proposed development would be consistent with the recommendations in the Sector Plan and recommended approval, although the Staff Report did not provide a detailed analysis of the Sector Plan. Both of these recommendations were based on a proposal with a maximum height of ten stories, considerably higher than the seven-story limit to which the Applicant has now agreed. See Staff Report at 1,3,9; see *also* Community-Based Planning Division memorandum of May 22, 2007, attached to Staff Report.

The Applicant's land planner, Stephen Gang, opined that the proposed development would fully implement the Sector Plan's recommendations for the site, and provided extensive, detailed analysis in support of his conclusion. The discussion of the Sector Plan that follows draws heavily on Mr. Gang's analysis.

1. Vision

Mr. Gang's analysis began with the Sector Plan's vision, found on page 9:

The Glenmont of the future will be a transit-oriented area. A compact, mixed-use center will be the focus of community activity and establish a sense of place. New development will be concentrated around the new Metro station. Existing neighborhoods with single-family homes surrounding the new development will be preserved and protected.

Mr. Gang declared that the proposed development would create the mixed-use community envisioned in the Sector Plan by employing a variety of unit types along with neighborhood-scale retail. See Ex. 56 at 11. The development would be concentrated around the Metro station, with pedestrian pathways designed to guide residents to Metro and help pedestrians feel safe walking there. Mr. Gang emphasized that parking would be either integrated within the blocks or underground (as stated in the Binding Design Principles), so that the streets would be pedestrian-oriented, rather than looking like parking lots, as often happens in multi-family

communities. Mr. Gang suggested that convenience retail across from Metro on Glenallan Avenue, as well as the preservation of a central open space on the site, would be critical factors in establishing the “sense of place” called for in the Sector Plan.

Planning Goals. The Sector Plan established a series of planning goals that were intended to balance competing interests. See Sector Plan at 9. The text of those goals is quoted below, together with Mr. Gang’s analysis and other relevant evidence.⁶

Goal 1. Preserve the Glenmont community as a stable, predominantly residential community.

The proposed development would be predominantly residential. Mr. Gang stated that it would protect the residential character of the area because of the scale and types of uses, with a transition from three or four stories along Layhill Road to higher buildings farther west. The Hearing Examiner notes that if Technical Staff’s preference for multi-family buildings on Block F prevails, the corner of Glenallan Avenue and Layhill Road will likely have a 65-foot building, perhaps stepping up to 85 feet as it moves away from Layhill Road. Mr. Gang and fellow land planner Miguel Iraola testified that a 65-foot multi-family building on this corner would be compatible with the Winexburg multi-family complex across Layhill Road because the nature of the use is the same, and the communities would be separated by a 120-foot road right-of-way, building setbacks on both sides of Layhill, a drop in grade on the east side of Layhill and substantial landscape buffering on the Winexburg site. The Hearing Examiner observes that the impact of the proposed development on nearby single-family homes would be attenuated by distance and intervening roadways and uses. In addition, increased population diversity and enhanced retail options could strengthen Glenmont as a whole.

Goal 2. Enhance community identity by strengthening the neighborhoods within the Sector Plan area and providing additional gathering places such as community facilities, public open spaces, and pedestrian friendly streets.

⁶ Goal 9, “Develop a transportation system that serves as the foundation of an emerging Center in Glenmont,” is not listed because it pertains more to government action than to private development. Goal 14, “Stop commercial blight by improving Glenmont’s existing commercial area . . .,” is not included because it does not apply to the subject site, a residential area.

Mr. Gang opined that the proposed development would serve this goal in a number of ways. It would establish a new street edge on three major roads, where currently there is no defined edge, and would create a “gateway” to the Metro station. Mr. Gang believes that the community identity of the neighborhoods within the Sector Plan area would be “strengthened and invigorated by the establishment of a new, well designed, and clearly identifiable retail center at the transportation hub of Glenmont.” Ex. 56 at 11. He stated that retail spaces and a network of open spaces throughout the site would provide gathering places, and people would be encouraged to come to those spaces by pedestrian-friendly streets and tree-lined sidewalks.

Goal 3. Focus new development at appropriate locations near the Metro station consistent with the General Plan.

The proposed development would contribute to this goal by creating a large mixed-use development very close to Metro.

Goal 4. Provide a center for Glenmont to serve as a focal point and gathering place for the community.

To the extent that this goal was intended to promote the creation of a formal gathering place, such as a public park or community center, private development is not the vehicle to achieve this goal. The proposed development would, however, create smaller gathering places that would be open to the public, such as the retail spaces and the central open space leading from Glenallan Avenue to the environmental buffer overlook.

Goal 5. Ensure that new development is compatible with the existing community.

Mr. Gang opined that the proposed development would be compatible because of its height limits, particularly the proposed 65-foot and 50-foot height limits along Layhill Road. Mr. Gang compared the height limits to the existing multi-family buildings across Layhill Road, which are mostly three-story buildings and are separated from the subject site by a road with a 120-foot right-of-way. Mr. Gang noted that the taller, 85-foot height limit would be used farther west, closer to Georgia Avenue and Glenallan Avenue. Mr. Iraola likewise opined that the proposed development would be

compatible with the surrounding area, citing the similarity of uses, height limits, setbacks, trees and the convenience of additional retail.

Goal 6. Provide safe and efficient traffic circulation for local and regional travel, balancing transportation needs with the impacts on the community.

Mr. Gang described the street network proposed on the subject site as a balance between the needs of residents using Metro and those using automobiles. He noted that the Sector Plan recommends an interior street bisecting the subject site, which the Applicant has provided for. The Applicant has chosen a slightly different alignment from that shown in the Sector Plan, allowing the road to meander through the site rather than being exactly parallel to Glenallan Avenue. This is intended to encourage lower driving speeds, provide greater safety and create a distinctive neighborhood identity and streetscape. See Ex. 56 at 12.

Goal 7. Provide attractive, safe, and convenient linkages to major destinations, including the Metro station and the proposed Glenmont Center, to promote walking and biking.

The binding components of the Development Plan demonstrate that the proposed development would create safe, pedestrian-friendly road networks, open spaces and linkages to Metro, as well as linkages to the subject site from the larger neighborhood. The evidence suggests that the main pedestrian safety challenge would be Glenallan Avenue, which currently carries high-speed cut-through traffic and is known among local residents for vehicles taking the curve too fast and driving off the road. The Applicant intends to seek county approval for pedestrian safety measures such as a mid-block pedestrian crossing signal and pedestrian count-down signs at the corners. The Applicant also contends that activating the street frontage with homes opening onto the street and retail businesses would have a calming effect on traffic, particularly when cars start turning into the site.

Goal 8. Encourage the use of the existing and future public transportation systems and reduce reliance on travel by single occupant vehicles.

The proposed development's location directly across the street from Metro would be the most significant factor in encouraging the use of transit, aided by the interconnected sidewalks

leading to Metro. Mr. Gang noted that the Applicant proposes to build only the bare minimum number of parking spaces required by the Zoning Ordinance, in hopes of further reducing automobile dependency.

Goal 10. Assure that neighborhoods are protected from intrusive uses.

The proposed development would not intrude into existing residential neighborhoods. It would replace an existing residential community of aging buildings with a modern, higher-density, mixed-use community.

Goal 11. Support the continuity of the County's Green Corridors Policy along Georgia Avenue, Layhill Road, and Randolph Road by providing attractive, landscaped roadways.

The Development Plan provides for a 20-foot dedication along Georgia Avenue to allow its expansion to the full width recommended in the Sector Plan, at least on the Applicant's side of the road. The Binding Design Principles ensure that buildings will have front doors facing the street, as well as sidewalks and street trees. The Applicant plans to include street tree enhancement, as permitted by the County, between the curb and the front of the units. This is depicted on the Development Plan as a double row of street trees along Georgia Avenue.

Goal 12. Protect the edges of residential neighborhoods along busy highways.

Mr. Gang stated that one of the ways the proposed development would accomplish this goal is to have residential units raised higher than the streets, with staircases for entry, so passers-by cannot look into the units. He noted that setbacks would be adequate to both meet the goals of transit-oriented development and satisfy safety factors along the busy streets.

Goal 13. Concentrate commercial uses along Georgia Avenue, Layhill Road, and Randolph Road in a limited number of key locations, as called for by the Green Corridors Policy expressed in the 1989 Kensington-Wheaton Master Plan.

The proposed development proposes commercial uses on its Glenallan Avenue frontage, as to which the Sector Plan is silent. Technical Staff and the Planning Board appears to find that commercial uses are appropriate on Glenallan, as do most of the community members who participated in these proceedings.

Goal 15. Protect and preserve environmentally sensitive features and environmentally sensitive areas.

The proposed development would improve conditions in the most environmentally sensitive area of the site, where the stream emerges, by removing buildings and parking from the environmental buffer area, preserving existing forest in the buffer and planting new trees there, and installing stormwater management measures to filter run-off and decrease the quantity and speed of run-off flowing into the stream.

Goal 16. Protect and improve water quality in the Rock Creek and Northwest Branch watersheds.

The testimony of two environmental experts suggests that the proposed development has at least the potential to improve water quality in the stream that flows through the site, which is part of the Northwest Branch watershed, by removing impervious surfaces from the environmental buffer, planting trees in the buffer, and installing stormwater management facilities designed to both clean the stormwater run-off discharging into the stream and decrease its quantity and velocity.

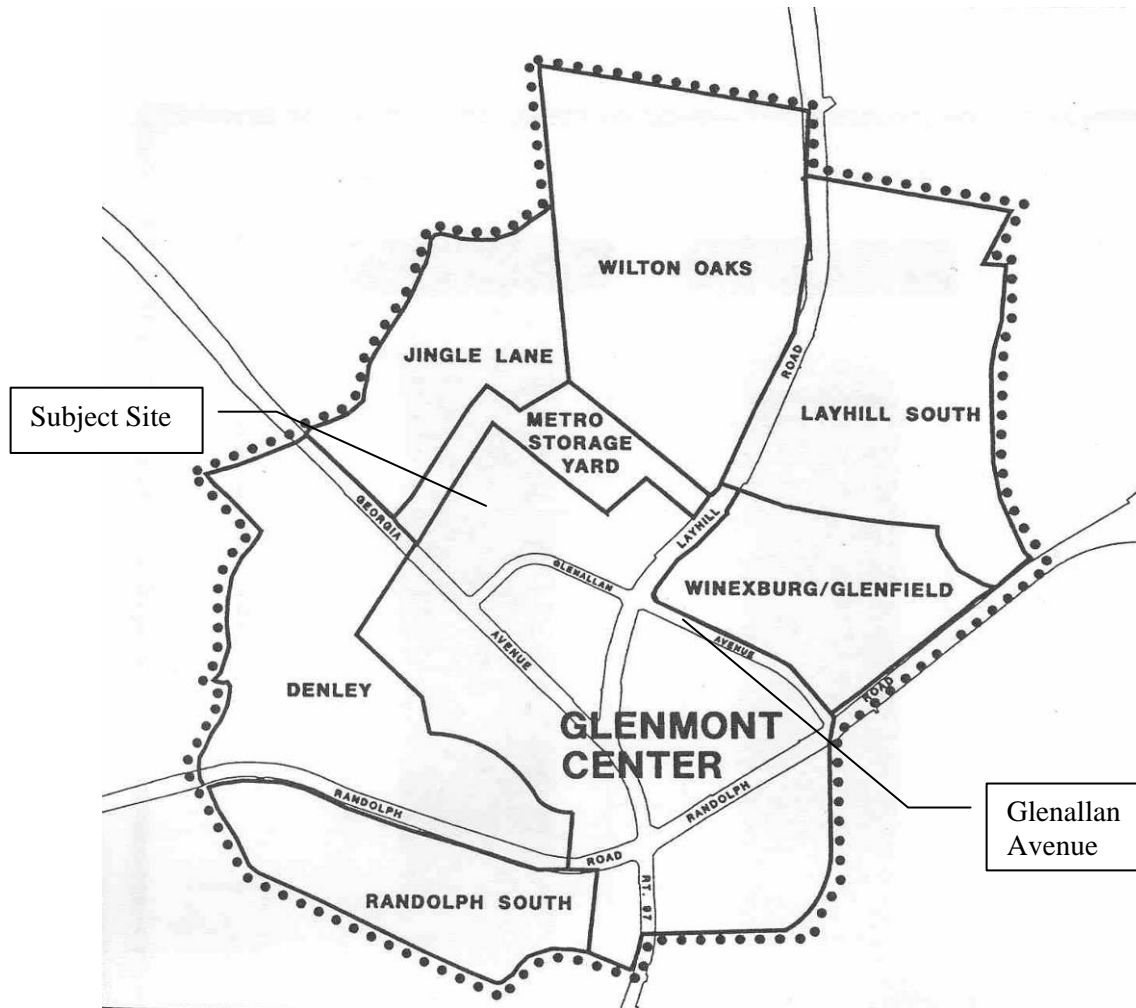
Goal 17. Protect the residents of Glenmont from exposure to excessive noise levels and degraded air quality.

Mr. Gang stated that the proposed dwelling units would conform to all county and state regulations dealing with noise requirements, and that units would be placed on site “in a manner that will minimize noise impact from the adjacent streets and the Metro rail yard.” Ex. 56 at 13. The details of these efforts would be addressed during site plan review.

2. Planning Framework

The Sector Plan employed a Center and Neighborhoods concept, intended to focus new development in a transit-serviceable town center while protecting surrounding neighborhoods from intrusive uses and through traffic. See Sector Plan at 12, 14. “Glenmont Center” (alternatively called the Glenmont Village Center) and surrounding neighborhoods were shown in the diagram on the next page. The subject property is within the Glenmont Center, stretching from Layhill Road on the west to Georgia Avenue on the east and from Glenallan Avenue on the south to the Metro storage yard on the north.

Sector Plan Center & Neighborhoods Concept, p. 15



This Planning Framework was based on the premise that Glenmont lacked a cohesive “center.” See Sector Plan at 17. The existing uses around the Metro station did not relate to each other, and failed to “contribute to a positive image for Glenmont.” *Id.* The Sector Plan found that the Glenmont Shopping Center did not adequately satisfy the community’s needs for neighborhood-oriented retail, and that its appearance, for the most part, did not reflect well on the community. *Id.* It is worth noting that based on hearing testimony, some community members believe that while the Glenmont Shopping Center is not “fancy,” it does satisfy the community’s local retail needs, and reflects the character of Glenmont. See testimony of Max Bronstein and Michael McAteer.

The Sector Plan described Glenmont as standing at a major crossroads. The plan saw in the opening of the new Metro station and the presence of several nearby, redevelopable parcels the opportunity to create a viable center for the larger community, and help rejuvenate all of

Glenmont. One of the problems brought to light by these zoning applications is that some residents of Glenmont do not want rejuvenation. They like Glenmont the way it is, they feel the existing housing serves the needs of existing residents, and they do not want the increased home values that rejuvenation implies.

The Sector Plan proposed several changes for Glenmont: enhancements to Georgia Avenue to make it a green boulevard, transportation improvements for anticipated through traffic, significantly higher residential density on the subject property, and upgrades for the Glenmont Shopping Center and the commercial properties in the triangle between Layhill Road and Georgia Avenue. See Sector Plan at 21-22. The Sector Plan anticipated that implementation of these recommendations would accomplish several important objectives, as quoted below.

- ◆ The proposed redevelopment will help to create a positive image for the Glenmont community, thereby contributing to a sense of community identity among those who live or work in Glenmont.
- ◆ The provision of an upgraded retail center will enable Glenmont residents to satisfy their day-to-day shopping needs locally without having to drive to more distant retail centers.
- ◆ An improved and enhanced shopping center will increase opportunities for community interaction and enhance community identity.
- ◆ More intense development around the transit station will help maximize the investment in transit facilities.
- ◆ The addition of new, high quality, middle and upper income housing will reduce housing turnover, replace aging housing stock, and minimize negative impacts on schools. Middle and higher income housing is under-represented in the area and should be encouraged.

Mr. Gang opined that a large-scale development is needed to achieve the first goal. He suggested that the subject site is a good place to start the redevelopment of the Glenmont Center because it has been assembled under a single ownership, in contrast to the Glenmont Shopping Center which, according to Applicant's counsel, has 14 separate owners. Mr. Gang observed that even if the Glenmont Shopping Center does not get renovated, having 90,000 square feet of retail on the subject property would give the area an upgraded retail center and a pleasant shopping experience.

Mr. Gang noted that the proposed development would bring more intense development around Metro, although not the maximum density that would be permitted in the zone. He noted that the Sector Plan acknowledges a need for new types of housing in the Glenmont area, where affordable housing is already available. He stated that the proposed development would provide a mix of higher-income housing, although he described that as “relative,” noting that the units would not be super-sized. He described the units as representative of inner-city, near-Metro housing, which is generally smaller, and suggested that this project might provide entry-level housing for young adults. He opined that the retail portion of the development would provide a focal point for the community and a central place for socializing and shopping. Mr. Gang also stated that the proposed development would take full advantage of its proximity to the Metro station and bus service, in keeping with longstanding county policies that encourage higher density around Metro stations.

Mr. Gang noted that the Proposed Land Use map on page 19 of the Sector Plan proposed few changes in the general categories of land use. The subject site, for for example, is recommended for continued multi-family use, with the only change being its inclusion in the area shown on page 20 as “Glenmont Center.” Mr. Gang postulated that this shows the plan’s intention to keep the identity and character of the sector plan area generally the same, except for key parcels intended to rejuvenate the area. See *id.* at 127.

3. Transit Oriented Development

The Sector Plan identified the Glenmont Center, shown in the diagram on page 12 above, as a transit station development area. See Sector Plan at 22. This is important, as it satisfies one component of the purpose clause for the TS-R Zone. As the Applicant pointed out, the Glenmont Center transit station development area incorporates the entirety of the subject property, including the parcel currently zoned O-M.

4. Site-Specific Recommendations

The Sector Plan provides more than a page of textual and pictorial recommendations specific to a 30.4-acre area it identifies as “Glenmont Metrocentre.” See Sector Plan at 30-32. That tract of land corresponds to the portions of the subject site that are currently zoned R-30 or R-T 12.5,

which were under single ownership at the time of the Sector Plan. The Glenmont Metrocentre area did not include the half-acre portion of the subject site that is zoned O-M, which came into common ownership with the rest of the site after the Sector Plan had been completed. The Sector Plan recommended no change in zoning or land use for the O-M parcel, in all likelihood because it housed an ongoing enterprise, and was not anticipated to be available for redevelopment.

The textual recommendations begin with a description of the current use of the site, a 30-year-old development that lacks modern amenities and “has fallen into disrepair.”⁷ Sector Plan at 30. The plan acknowledges that older garden apartments serve an important housing market, but states that redevelopment may be appropriate at this location, partly because, unlike other garden apartment projects in Glenmont, the subject site had (and continues to have) a significant vacancy problem. Moreover, its prime location across from the Metro makes it appropriate for higher density development, with retail uses and services for the convenience of the new residents, and the property owners were interested in demolishing the existing apartments and replacing them with 1,500 to 2,000 new units.

The Sector Plan recommended the Glenmont Metrocentre site for continued R-30 zoning with the option to rezone to TS-R, “to accommodate a variety of residential uses and housing types, possibly including one or two buildings up to 10 stories in height and some convenience retail.” Sector Plan at 30. The Sector Plan suggested that a child care center and elderly housing might be appropriate special exceptions. The recommended base density under the TS-R option was 42 dwelling units per acre, which results in a maximum of 51 units per acre with an MPDU bonus. See *id.* The Sector Plan noted that the existing development has a density of 12 units per acre and the existing R-30 zoning permits up to 14.5 units per acre, so TS-R zoning would substantially increase the housing stock near the new Metro station.

On a more qualitative level, the Sector Plan states that if the Glenmont Metrocentre site redevelops, “it should be an extension of the Glenmont Center rather than a neighborhood

⁷ Some community members disputed this description, stating that the units are older, but not in disrepair. See testimony of Vicki Vergagni.

separated from the rest of Glenmont.” Sector Plan at 32. To this end, the plan recommends a new street within the subject site, parallel to and north of Glenallan Avenue, to help incorporate the new development into the Center “and provide a relief valve for traffic on Glenallan Avenue.” *Id.* The Sector Plan specifies that this could be a private street, which is the Applicant's intention.

The Development Plan indicates a base density for the entire site of 42 units per acre, and an overall maximum density of 50.1 units per acre. The density would be lower in the Stage 1 portion of the site, at 32.45 units per acre, and much higher in the Stage 2 area, at 119.4 units per acre. However, Mr. Gang argued persuasively that the Sector Plan's density recommendation pertained to the entire Glenmont Metrocentre site, so density should be calculated based on the two stages together.⁸ Avoiding potential future confusion over the permitted density level in Stage 2 is one reason Mr. Gang believes the entire site should be rezoned at one time. See Tr. June 29 at 81.

Mr. Gang noted that the maximum number of units was calculated by multiplying the maximum recommended density, 51 units per acre, by the number of acres in the Glenmont Metrocentre site, 30.4, which comes out to 1,550.4. The Applicant has not sought to increase the number of units to account for the additional half-acre on the O-M parcel (30.9 acres times 51 units per acre equals 1,575.9 units). As noted earlier, Stage 1 of the development would have 12.5 percent MPDUs, increasing to as much as 14.5 percent if Stage 2 goes forward.

In addition to satisfying the density recommendations, Mr. Gang stated that the subject site's proximity to Metro makes it ideal for the type of community proposed, with a variety of housing types plus retail.

The site-specific recommendations state that TS-R zoning should not be granted until appropriate staging triggers are met, requiring a separate TS-R application for each stage of

⁸ Mr. Gang's conclusion that the Sector Plan's density recommendation applied to the site as a whole is bolstered by testimony offered by Applicant's counsel, Steven Robins, who was sworn as a witness solely to testify about his recollection of the Sector Plan process. See Tr. June 29 at 107. Mr. Robins testified that he has represented the owners of the subject property, the Eisenstadt property, for more than 20 years. In that capacity, he participated in the development of the Sector Plan as an observer on the citizens' advisory committee. Mr. Robins stated that all of the Sector Plan recommendations were targeted at the subject site as a whole. The staging idea was raised at the 11th hour, after all of the work sessions before the Planning Board and the County Council had been completed. Thus, the staging element was the only element of the Sector

development. This recommendation, which resulted in the two applications before the District Council today, is discussed in more detail in Part III. F.10 below.

The Sector Plan includes a conceptual drawing of how its recommendations might look on the Glenmont Metrocentre site. See Sector Plan Figure 14, at 31. In viewing this conceptual drawing, reproduced on the next page, it is important to remember the explanatory note provided at the beginning of every master or sector plan, in this case on page vi:

Any sketches or drawings in an adopted mater plan are for illustrative purposes only and are intended to convey a general sense of desirable future character rather than a specific commitment to a particular detailed design.

Figure 14 contains 14 numbered elements. Mr. Gang provided detailed testimony about how the proposed development would be consistent with these elements, as shown below.

1. Georgia Avenue enhanced boulevard. The proposed plan provides the dedication necessary to support the full 140-foot right-of-way recommended in the Sector Plan, and proposes appropriate setbacks.

2. Possible child care facility. The Applicant considers a child care facility a viable possibility, although it would require a special exception, and it would not be practical to identify a location on the Development Plan at this early stage.

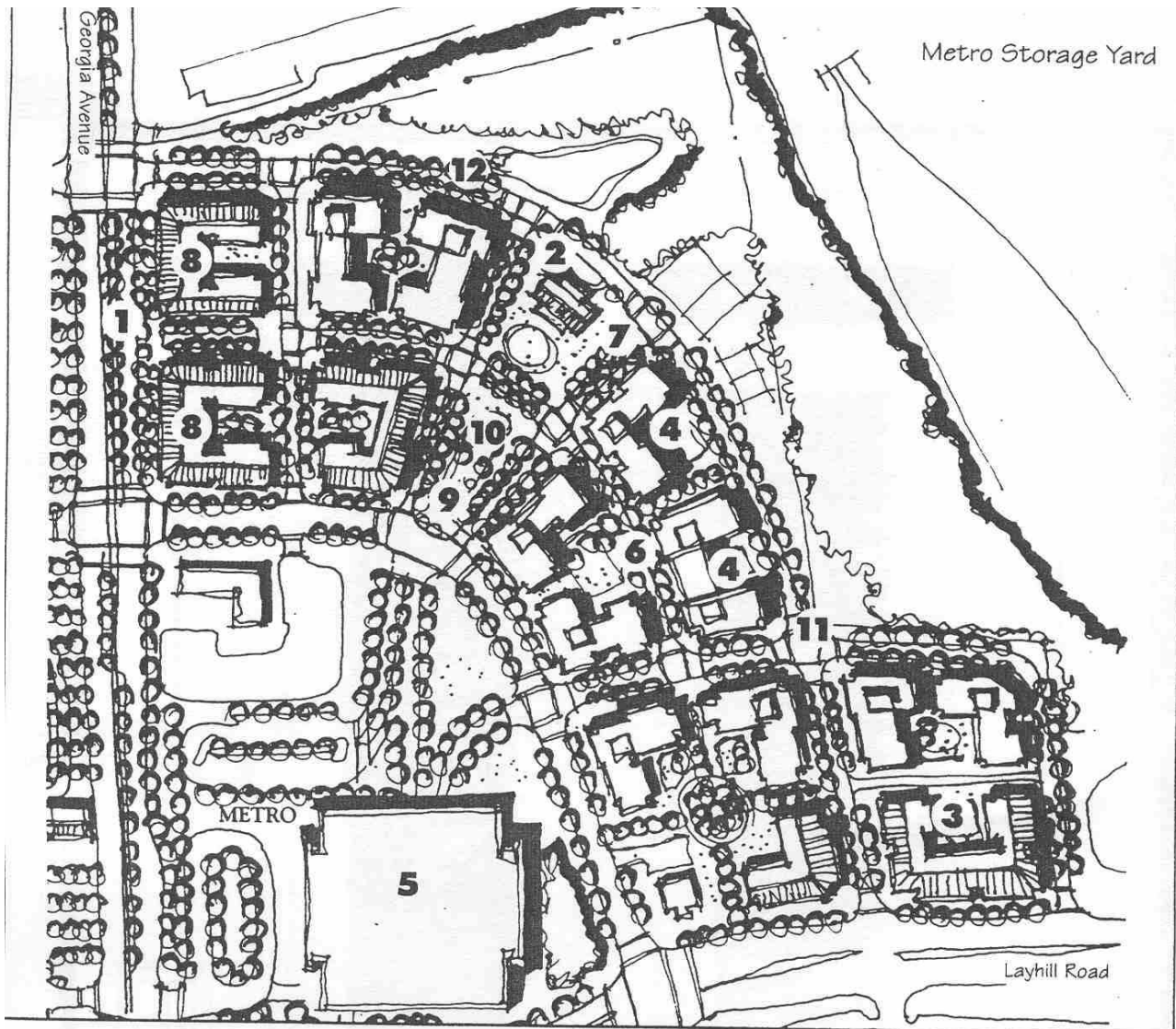
3. Low-rise housing. Mr. Gang acknowledged that in other master plans, “low-rise” is defined as three stories. He observed that this Sector Plan does not define “low-rise.” Because this is a multi-family, transit-oriented development, he looks to the industry standard for multi-family buildings, which considers anything up to 65 feet “low-rise,” which means four stories over some sort of podium (in this case, retail). Mr. Gang would consider up to 85 feet mid-rise, and over 85 feet high-rise, because it goes into another building code section and requires concrete.

4. High-rise housing – up to ten stories. The Applicant has agreed to limit the tallest buildings to seven stories, below the maximum recommended in the Sector Plan. Based on Mr. Gang’s testimony, a maximum height of 85 feet means no high rises are proposed.

Plan that contemplated dividing the site into more than one part, and there was never any discussion about which portion of the land area should be in which stage.

5. **Metro parking.** Metro parking has been built and more is planned.

Transit-Oriented Development Concept for Glenmont Metrocentre, Sector Plan Fig. 14



- 1 Georgia Avenue enhanced boulevard
- 2 Possible child care facility
- 3 Low-rise housing
- 4 High-rise housing — up to ten stories
- 5 Metro parking
- 6 Neighborhood "Main Street"
- 7 Tree-lined sidewalks
- 8 Street-oriented buildings with ground level commercial
- 9 Direct connection to Metro
- 10 Central open space
- 11 Internal street system to promote interconnectivity and minimize walking distance
- 12 Denley Street extended — new street



6. Neighborhood “Main Street.” Figure 14 of the Sector Plan identifies a central road running through the development from Georgia to Layhill as Main Street. Mr. Gang stated that there are two roads proposed on the development plan that could be considered the main street: (a) Glenallan Avenue, or (b) the street running through the middle of the development from Georgia to Layhill. Glenallan would have retail, and would become the primary street for residents of the Glenmont area to use and interact with residents of the new community. The internal road also would have “Main Street” attributes, as a major road with a variety of units and open spaces where people can interact. Mr. Gang agreed with the Hearing Examiner’s suggestion that the Sector Plan’s call for a Main Street was an effort to ensure a network of connected streets, rather than just blocks leading only to the main exterior roads. He noted that the main streets tie together the shorter blocks leading to Metro. See Tr. June 26 at 168. Ultimately, he opined that the internal main street would serve the “Main Street” function called for in the Sector Plan. See id. at 169.

7. Tree-lined streets. The Applicant plans to have tree-lined streets everywhere, as shown on the Development Plan and listed in the Binding Design Principles.

8. Street-oriented buildings with ground level commercial. The Sector Plan shows these uses along the site’s Georgia Avenue frontage. The Applicant has rotated them to the Glenallan Avenue frontage nearest to Georgia Avenue, finding that traffic just moves too quickly on Georgia Avenue. Mr. Gang explained that Glenallan currently is basically uncontrolled, but the Applicant believes that with retail and dwelling units close to the street, traffic will tend to slow down, especially when cars turn in to use the retail. Locating the retail on Glenallan also allows it to be more visible and convenient for Metro passengers.

9. Direct connection to Metro. The Development Plan shows three pedestrian connections from the subject site to Metro. Two are at the signalized intersections at each end of Glenallan Avenue (at Georgia Avenue and at Layhill Road). The third is at a central location where the Applicant hopes to install a pedestrian crossing signal.

10. Central open space. Figure 14 of the Sector Plan showed one big, central, urban open space. The proposed Development Plan has three central open spaces. The largest is

the central open space along Glenallan Avenue, another is the restored environmental buffer, and the third is a transition from multi-family to townhouses off of Layhill Road. The central open spaces proposed in the middle of the property would be visual focal points for people entering the site, whether they come from Georgia Avenue or from the Metro. See Tr. June 26 at 232. From the Metro side, the grade drops off towards the environmental buffer so there would be a wonderful visual corridor. Both Mr. Gang and Mr. Iraola contrasted this with the current apartment complex, which has a wrought iron fence separating it from the rest of the community.

The Development Plan also shows a number of smaller, more neighborly open spaces. Mr. Gang noted that the proposed development would satisfy the open space and public use space requirements for the zone, whether both applications are granted or only the Stage 1 application. See Tr. June 26 at 176-77.

When the Hearing Examiner asked whether Mr. Gang found it significant that Figure 14 shows high rises in a different site location than currently proposed, Mr. Gang testified that the interpretation he discussed with Staff was to have low, three-story buildings along Layhill Road, with larger buildings moving west towards Georgia Avenue. See Tr. June 29 at 98.

11. Internal street system to promote interconnectivity and minimize walking distance. The Development Plan shows an extensive interconnected internal street system.

12. Denley Road extended – new street. Mr. Gang noted that the proposed internal main street would serve the function of Denley Road extended as called for in the Sector Plan. It would start to connect the Sector Plan area, make this site part of the neighborhood, create more pedestrian-friendly blocks, and serve as a relief valve for traffic on Glenallan Avenue, at least for traffic generated by site residents. Its meandering path would make it inconvenient as a cut-through. See *id.* at 183.

5. Development Guidelines

The Sector Plan contains five development guidelines on pages 36-38, which Mr. Gang opined would be fully satisfied by the proposed development. The development guidelines call for a compatible mix of uses in the transit oriented development area; diversity in housing types, including

low-rise, high-density buildings with interior open space, as well as mid-rise and high-rise buildings up to ten stories; interconnected streets with short, walkable blocks; a neighborhood main street parallel to Glenallan Avenue; a pedestrian and bicycle-friendly environment with buildings fronting on streets and parking in the rear; and compatibility with the surrounding neighborhoods.

As detailed in the preceding sections, the proposed development would satisfy these guidelines in every respect except high-rise buildings, which the Applicant gave up in exchange for community support. Some community members argue that the density and mid-rise building heights would not be compatible with the existing moderate-density, low-rise buildings in the area. Mr. Gang and Mr. Iraola pointed to similarity of uses, intervening roadways, trees and amenities to support their findings of compatibility.

6. Community Facilities

The Sector Plan contains three objectives related to community facilities, only one of which applies to a private development:

Provide open spaces (for each neighborhood) that are centrally located, offer gathering opportunities, and [are] designed to form a public focus. . . . Any redevelopment of the Glenmont Metrocentre apartments . . . should include a significant community open space, appropriately sized and designed to serve the development's needs. The open spaces in these developments should be centrally located and easily accessible on foot.

The Development Plan incorporates a significant community open space system, including large, highly visible, central open spaces in the middle of the site, linking Glenallan Avenue with the environmental buffer area. All of the open spaces would be easily accessible on foot due to extensive, interconnected sidewalks.

7. Streets and Circulation

The Sector Plan contains eight objectives intended to make the Glenmont Center accessible for people using any mode of travel. It notes that safe and efficient circulation within the Center, and between it and the neighborhoods, is key to the viability of the entire Center and Neighborhoods concept. See Sector Plan at 45. Mr. Gang opined that the proposed development would promote each of these objectives, which include an interconnected street system; the extension

of Denley Road; tree-lined sidewalks, a tree panel and a Class I bikeway along Glenallan Avenue between Layhill Road and Georgia Avenue; promoting transit use; and establishing Georgia Avenue as a pedestrian-friendly, green boulevard.

The proposed development would promote these goals with its extensive street network, neighborhood main street and tree-lined sidewalks on all roads. Mr. Gang testified that a Class I bikeway would be provided along Glenallan Avenue, although this is not specifically shown on the Development Plan.

8. Noise

The Sector Plan recognizes that Glenmont is located at the intersection of three heavily traveled roads, Georgia Avenue, Randolph Road and Layhill Road, making traffic noise a major concern. See Sector Plan at 78. In addition, it notes that the Metro storage yard is located north of the subject site, and considerable attention has been given to designing the storage yard to minimize noise. The Sector Plan has one noise-related objective that applies to private development, on page 79:

Avoid exposure of new residential development to outdoor noise levels higher than 65 dBA Ldn. . . . If residential uses are desirable in high noise areas, land should be set aside by the developer for the construction of noise attenuation devices consistent with the Green Corridors Policy. If other means of attenuating noise are infeasible, acoustically treated windows and noise sensitive site design standards should be incorporated into new residential development in high noise areas.

Mr. Gang directly addressed this objective in connection with the townhouses proposed on Blocks G and H, some of which would be located fairly close to the Metro storage yard. He testified that there is a stand of trees near the storage yard (most of which are, admittedly, not on the Applicant's property), and a steep grade dropping off towards the storage yard. He stated that during his site visits he has never heard the trains coming into the repair yard because they are traveling so slowly at that point. He noted that the Development Plan shows a road between the northernmost row of townhouses and the property line, and if necessary a wall, noise berm or trees could be installed in that corner. Mr. Gang also stated more generally that the proposed dwelling units would conform to all county and state regulations dealing with noise requirements.

9. Staging

The Sector Plan recommended a staging mechanism to allow some development to proceed in the Glenmont Center immediately, while delaying most of the anticipated growth to a second stage. See Sector Plan at 82. The Sector Plan recommended that Stage 1 allow up to 500 new units and 200 new jobs to proceed immediately, with all other new development delayed “until either a grade separated interchange or other transit or transportation improvement is provided that makes the intersection of Randolph Road and Georgia Avenue function at an acceptable level.” *Id.* The Sector Plan specifically stated that “no local map amendment or optional method application beyond those necessary for Stage 1 should be approved until the conditions necessary for Stage 2 are realized.” *Id.*

The Sector Plan intended the staging plan to provide residents with three assurances:

- 1. assure area residents that the majority of new development will not proceed until traffic congestion at the intersection of Georgia Avenue and Randolph Road has been addressed;**
- 2. ensure that the majority of new development, approximately 75 percent of new residential development, will not proceed until well after the Metro is operational. This would allow enough time to evaluate the impact of Metro on traffic in the area; and**
- 3. provide a mechanism to protect the area from excessive new development if the grade-separated interchange or another acceptable transportation improvement does not occur.**

The Sector Plan anticipated that during each stage, the County Council would determine the amount of development to be accommodated each year through the Annual Growth Policy.

As the Council members no doubt are aware, plans have been underway for some time to construct a grade-separated interchange at Georgia Avenue and Randolph Road, to alleviate what is indisputably a very high level of congestion. According to a February 6, 2007 letter sent jointly by County Executive Isiah Leggett and County Council President Marilyn Praisner to the Chairs of Montgomery County’s state Senate and House delegations, a grade-separated interchange at this location is the County’s top priority for projects that will be ready for construction funding during the

next six years and are currently in the design or project-planning stages. See Ex. 67(d) at 2. The letter stated that the County had already dedicated \$8.2 million in Fiscal Year 2007 towards design and right-of-way acquisition for this project, and expected to approve another \$6.1 million in FY08 (to be matched by \$6.1 million from the State) for right-of-way acquisition and utility relocation. See *id.*

Technical Staff indicates that the State Highway Administration (“SHA”) is proceeding with the design of the interchange, but it is not yet funded for construction. See Community-Based Planning Memorandum of May 22, 2007 attached to Staff Report (“Community-Based Planning Memo”) at 2. SHA, in its comments on the present applications, stated that it supports obligating the Applicant to mitigate its traffic impacts by contributing funds toward “the future grade-separated interchange at the MD97/Randolph Road intersection.” See Ex. 90. This suggests that SHA supports the grade-separated interchange and considers it likely to be constructed.

There was considerable discussion during the hearing about the meaning of the Sector Plan language, particularly “transportation improvement is *provided*” (emphasis added) and “conditions necessary for Stage 2 are *realized*.” One could interpret this language to suggest that a rezoning for Stage 2 should not be granted until a grade-separated interchange, or other transit or transportation improvements sufficient to make the Georgia Avenue/Randolph Road intersection function at an acceptable level, have been constructed. One could alternatively interpret this language to require that adequate improvements are funded, or otherwise committed to, before rezoning is granted for Phase 2, or after rezoning but before Phase 2 is permitted to proceed.

Community-Based Planning Staff at MNCPPC, who hold the principal responsibility for master plan interpretation at their agency, opined that the rezoning proposed here “meets the intent and the language of the Sector Plan” for both Stage 1 and Stage 2. See Community-Based Planning Memo at 2. Staff based this conclusion on the Planning Board’s 2006 approval of a subdivision plan for the Indian Spring Country Club case, a subdivision permitting the construction of 773 single-family homes at a location that feeds into the intersection of Georgia Avenue and Randolph Road. In conjunction with that approval, the Planning Board required the developer to contribute to the cost of the grade separation, or to make at-grade improvements to the intersection of Georgia Avenue and

Randolph Road if a grade-separated interchange is not built within a certain period of time. Community-Based Planning Staff found that the traffic study in the present case demonstrated that the at-grade improvements required in the Indian Springs case would make the Georgia Avenue/Randolph Road intersection operate at an acceptable level, even with the addition of the proposed development.⁹

Community-Based Planning Staff states an additional reason to support both requested rezonings, which is that any redevelopment of the subject site will require approval of a preliminary plan of subdivision by the Planning Board, and that approval could include a staging requirement if needed. See Community-Based Planning Memo at 2. Thus, Staff believes it appropriate to defer the staging called for in the Sector Plan from the rezoning stage to the subdivision stage. Community-Based Planning additionally recommends that the Development Plan in the present cases be consider illustrative, “to retain maximum flexibility in the approval of the rezoning . . . so that changes in the layout and shape of buildings and open space can be incorporated in the preliminary plan to create an attractive, safe, environmentally friendly, and walkable place using the best urban design and land use practices.” See *id.* at 3. In the Hearing Examiner’s view, the District Council is not at liberty to consider the Development Plan entirely illustrative. The Zoning Ordinance requires the Council to formally approve the Development Plan, if it elects to grant the rezonings, and to make five specific findings to support such approval. It would not be possible to make these findings if the Development Plan were completely illustrative. On the other hand, the Development Plan leaves room for final building locations and details of the site layout to be

⁹ Opposition party Max Bronstein requested a postponement of the hearing in the present cases until the resolution of an appeal of the Indian Springs subdivision approval that was taken by community member Richard Kauffunger. Mr. Kauffunger’s appeal alleged that the Planning Board had failed to properly follow the requirements of the Growth Policy and the Local Area Transportation Review Guidelines in approving the Indian Springs subdivision. The Hearing Examiner ruled that it was not appropriate to delay the hearing for the outcome of an appellate decision whose timing was uncertain, and whose outcome was only indirectly related to the issues at hand. The Hearing Examiner now takes official notice of the Circuit Court’s decision in the Indian Springs subdivision appeal, which was issued on September 5, 2007, Case No. 279654-V. The Court upheld the Planning Board’s decision, finding that the Board “took a complicated problem and, acting within the reasonable confines of the relevant governing law, came up with a carefully crafted solution that is based on substantial evidence.” Memorandum Opinion and Order at 20.

established during site plan review, so the Planning Board and Technical Staff would still be able to ensure an attractive, safe, environmentally friendly, walkable development.

Transportation Planning Staff at MNCPPC found that the requested rezonings satisfy the staging requirement because, with improvements at the Georgia Avenue/Randolph Road intersection, the requirements of Local Area Transportation Review would be satisfied. See Transportation Planning Memorandum of May 23, 2007, attached to Staff Report ("Transportation Planning Memo") at 5. Transportation Planning Staff notes that if the project proceeds, a separate traffic study will be required at the time of preliminary plan review, and the Planning Department may choose to audit the intersection independently. See *id.*

Transportation Planning Staff elaborated on its findings in a supplemental submission, stating that the Applicant should be required, at the time of preliminary plan, to provide or contribute to a transportation improvement at the Georgia Avenue/Randolph Road intersection. See Ex. 78. The preferred improvement would be a contribution to the grade-separated interchange, but if the interchange is not funded for construction by a date certain (to be determined at preliminary plan), the Applicant would be responsible for constructing the at-grade improvements identified in its traffic study, which are the same ones approved in the Indian Springs case. See *id.*

Transportation Staff notes that during the Indian Springs case, the Planning Board ruled that if the grade-separated interchange is not funded for construction and the at-grade improvements are not under construction by the time 80 percent of building permits have been issued for the development, no additional building permits should be issued until construction of the at-grade improvements begins. See *id.* In addition, the Planning Board required all at-grade improvements to be open to traffic by the issuance of 90 percent of the building permits. Staff believes that a similar approach would be appropriate for the present cases. Given the Applicant's commitment to providing the at-grade improvements if the grade-separated interchange is delayed, and the public benefit in having Stage 1 and Stage 2 reviewed together, Staff believes the Applicant has met the intent of the Sector Plan to allow approval of both applications. See Ex. 78.

The Applicant has endeavored to satisfy the Sector Plan's staging recommendations in two ways. First, it has divided the site into two areas, Stage 1 and Stage 2, and proposed to build a maximum of 500 new units and 4,000 square feet of retail in Stage 1. The testimony indicates that 4,000 square feet of retail would generate about ten jobs, far fewer than the 200 jobs the Sector Plan would permit. See Tr. June 26 at 243. The remaining density is reserved for Stage 2. Second, the Applicant has committed to a binding element that resolves the ambiguity inherent in the language of the Sector Plan. This binding element is restated here for ease of reference:

Binding Element No. 4, excerpted from Development Plan, Ex. 144(a)

No building permit applications for Stage 2 of the development will be applied for until either a grade separated interchange is fully funded for construction or other transit or transportation improvements are under construction that would make the intersection of Randolph Road and Georgia Avenue function at an acceptable level as determined by the Montgomery County Planning Board. The Applicant may incorporate the following mitigation measures as part of the subdivision application: physical roadway improvements, pro rate payments toward the programmed Georgia Avenue/Randolph Road interchange, Local Transportation Review mitigation measures (e.g., real-time transit signs, pedestrian count-down signals, bike racks, etc.), transit enhancements/incentives, establishing a neighborhood circulator shuttle, pedestrian safety measures and/or other improvements.

This binding element places the onus on the Applicant to refrain from submitting any building permit applications for Stage 2 until either (i) a grade-separated interchange is fully funded for construction; or (ii) transportation or transit improvements that the Planning Board finds make the intersection of Randolph Road and Georgia Avenue function at an acceptable level are under construction. The Applicant has structured this binding element to provide a very stronger assurance that Stage 2 will not be built unless improvements that will fix the intersection are underway. The binding element leaves open considerable flexibility regarding what kind of improvements can be considered acceptable, giving the Planning Board the necessary discretion to approve physical roadway improvements, pro rata payments toward the proposed interchange, transit improvements (a favorite of some community members who would prefer to have a Georgia Avenue busway instead of a grade-separated interchange) and traffic mitigation measures such as pedestrian count-down signals, bike racks, or a neighborhood shuttle.

Mr. Gang testified that if the District Council elects to approve the Stage 1 application but not Stage 2, Stage 1 can stand on its own for all development requirements, including parking, sewer and open space. He noted that although the full road network shown on the Development Plan would require the land in Stage 2, if only Stage 1 is approved, the roads within the Stage 1 area will be linked to the existing site access points. See Tr. June 26 at 239-40. The illustrative drawing below provides an idea of what the site would look like with only Stage 1 redeveloped.

Stage 1 Plan, Ex. 28



F. Public Facilities

Under the County's Adequate Public Facilities Ordinance (Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, schools, water and sewage facilities, and police, fire and health services will be adequate to support the proposed development, and whether the proposed development will adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets in the

Growth Policy and biennially in the two-year AGP Policy Element.¹⁰ While the final test under the APFO is carried out at subdivision, the District Council must first make its own public facilities evaluation in a rezoning case, because the Council bears the responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest. The Council's evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the Council's review and the opportunity for a broader review than may be available to the Planning Board at subdivision. The District Council is charged at the zoning stage with determining whether the proposed development would have an adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Transportation

Under the 2003-05 AGP Policy Element, most subdivision applications are subject to a transportation test called Local Area Transportation Review ("LATR").¹¹ The development proposed here is eligible for an Alternative Review Procedure that is provided in the Growth Policy for projects in Metro station policy areas. This procedure would allow the Applicant to avoid complying with LATR by paying double the applicable impact tax, participating in a transportation management organization and meeting trip reduction goals established by the Planning Board at subdivision, which must reduce trips attributable to the project by at least 50 percent. See 2003-05 Annual Growth Policy at 9-10. Applicant's counsel indicated during the hearing that the Applicant currently does not intend to elect the Alternative Review Procedure, but will make a final decision at subdivision. Accordingly, the Applicant presented evidence to demonstrate its compliance with LATR.

The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in making submissions to the Hearing Examiner for zoning cases. See LATR Guidelines at

¹⁰ See 2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375, adopted October 28, 2003. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element, which is still in effect.

¹¹ See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* ("LATR Guidelines") at 1. The Hearing Examiner takes official notice of the LATR Guidelines.

1. LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hour of the weekday morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.). The “peak hour” is the 60-minute segment within each three-hour peak period that has the highest level of traffic. This 60-minute period may be different at different intersections. For example, the peak hour is often earlier up-County, where commute times tend to be longer and people start earlier, than down-County.

a. Methodology and Scope of Traffic Study

The methodology prescribed under the LATR Guidelines is an analysis of Critical Lane Volume (“CLV”), which counts conflicting movements at an intersection, such as left turns v. through movements, as a means of assessing whether the intersection is performing at an acceptable level or is experiencing unacceptable levels of congestion. The County Council has established congestion standards for each policy area in the County, which establish the maximum CLV an intersection may have before it is considered to have unacceptable congestion. The congestion standards range from a CLV of 1,400 in rural areas to a CLV of 1,800 in Metro policy areas. See LATR Guidelines at 3. A development proposal will be considered to pass LATR if a traffic study acceptable to Technical Staff demonstrates that either the intersections studied will have CLVs below the relevant congestion standard with the proposed development in place (including the effect of any proposed traffic mitigation), or the proposed development would not make conditions worse at an intersection that already has a CLV exceeding the congestion standard. See *id.*

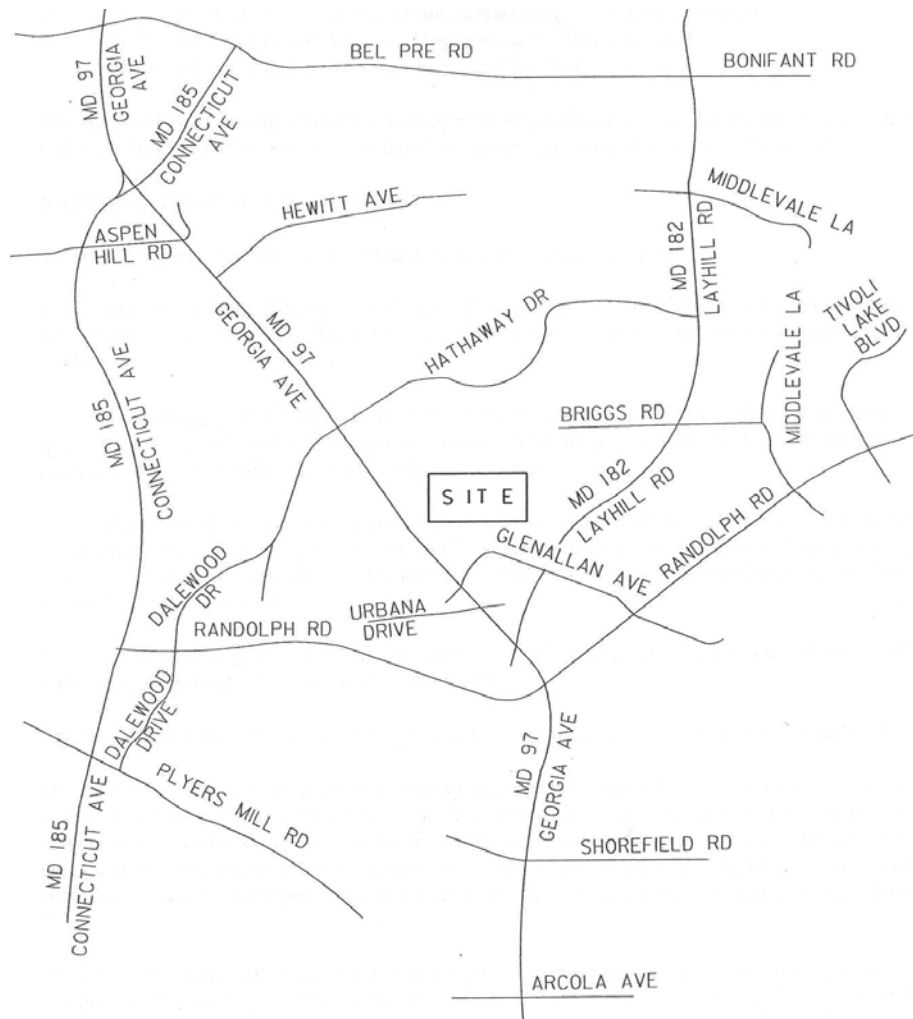
The Applicants performed a traffic study as required in this case, taking into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt (“background” traffic), and trips expected to be generated by the proposed development. Technical Staff required the Applicant to study the intersections listed below, with the first nine included in the analysis of Stage 1 and all 17 in the analysis of Stage 2:

1. Georgia Avenue at Hathaway Drive
2. Georgia Avenue at Glenallan Avenue
3. Georgia Avenue at Urbana Drive

4. Georgia Avenue at Layhill Road
5. Georgia Avenue at Randolph Road
6. Randolph Road at Glenallan Avenue
7. Layhill Road at Glenallan Avenue
8. Layhill Road at Briggs Road
9. Layhill Road at Middlevale Lane
10. Layhill Road/Bel Pre Road/Bonifant Road
11. Randolph Road at Tivoli Lakes Boulevard
12. Randolph Road at Middlevale Lane
13. Georgia Avenue at Shorefield Road¹²
14. Randolph Road at Dalewood Drive
15. Georgia Avenue at Hewitt Avenue
16. Georgia Avenue at Aspen Hill Road'
17. Georgia Avenue at Connecticut Avenue

The site location map below shows the relationship of the intersections to the site.

Site Location Map from Traffic Study, Ex. 62(a) at 2



¹² Substituted for Georgia Avenue at Arcola Avenue, listed in original scope letter, following discussion with Staff.

The Applicant carried out its own traffic studies where no recent traffic studies were available. For the key intersection of Georgia Avenue and Randolph Road, the Applicant did two counts, in January 2006 and January 2007. Both sets of counts were lower than counts taken by others, at the same intersection, in September 2005 and February 2006. See Ex. 62(a) at A18. Technical Staff decided that the most appropriate approach was to use an average of the four counts. See Transportation Planning Staff Memorandum of May 23, 2007, attached to Staff Report.

b. Stage 1 Analysis

The Stage 1 analysis found that all of the studied intersections currently operate below their applicable CLV congestion standards.¹³ See *id.* at 6. Thus, all nine of the intersections studied are considered to have acceptable levels of congestion under LATR. This finding contrasts starkly with testimony and photographic evidence, discussed in more detail in Part III.F. below, indicating that the intersection of Randolph Road and Georgia Avenue experiences heavy peak period congestion on a routine basis. See testimony of Craig Hedberg, Richard Kauffunger, and Vicki Vergagni; Exhibits 121(a)-(d).

The Stage 1 analysis did not include any programmed (publicly funded) or committed (privately funded) roadway improvements. Background traffic consisted of the approved Indian Spring subdivision, with 773 dwelling units, and the approved second Glenmont Metro Parking Garage. See *id.* at 7. Northbound through traffic was decreased by ten percent at intersections south of the access roads to the Metro garages. See *id.* The Stage 1 analysis found that all of the intersections studied would still operate at acceptable levels of congestion with background traffic except for one: the intersection of Georgia Avenue and Randolph Road, where CLV would rise from 1,763 in the morning peak hour and 1,687 in the afternoon peak hour under current conditions, to 1,803 in the morning peak hour and 1,811 in the evening peak hour with background traffic. See *id.* at 6, 11.

Stage 1 of the proposed Glenmont Metrocenter development was estimated to generate 201 “Net New Trips” during the morning peak hour and 244 during the afternoon peak hour.

¹³ Some of the intersections are in the Kensington/Wheaton policy area or the Aspen Hill policy area, which have lower congestion standards than the Metro Station policy areas.

This was based on a complicated set of calculations that started with the trips expected from the total of 852 units anticipated in Stage 1, then was reduced (i) for the number of existing units that would either be replaced or remain on site, since those would not generate “new” trips; (ii) by 15 percent for proximity to Metro; and (iii) by 1.5 percent for an “Internal Capture Credit,” representing an assumed decrease in off-site trips by residents because of on-site retail. The Internal Capture Credit is applied only to the afternoon peak hour. To this was added an estimate of traffic generation associated with the proposed 4,000 square feet of retail uses, reduced by 1.5 percent for the Internal Capture Credit and by 34 percent for pass-by trips, i.e., trips that are assumed to be by vehicles that are “passing by” on one of the roads that can access the retail without passing through any intersections (Georgia Avenue or Layhill Road).¹⁴

The trips estimated to be generated by Stage 1 were distributed on the roadway network according to a series of assumptions set forth in the LATR guidelines and other data provided by Technical Staff. Intersection CLVs were analyzed again with this additional data, leading to the same conclusion as with background traffic: all of the intersections studied had CLVs below the applicable congestion standard except Georgia Avenue and Randolph Road. With estimated Stage 1 traffic, the Georgia Avenue/Randolph Road intersection was estimated to have a CLV of 1,846 during the morning peak hour and 1,835 in the afternoon peak hour. See Ex. 62(a) at 16.

¹⁴ Mr. Hedberg explained these calculations at some length during the hearing, at the Hearing Examiner’s request. His explanation was almost as difficult to follow as the original charts themselves, and went on for at least half an hour. After the hearing Mr. Hedberg submitted a series of additional charts, with textual explanations, to clarify how the site trip generation numbers were calculated. See Ex. 133(a). These charts are clearer and easier to understand than the ones in the traffic study, Exhibit 62(a) at 13 and 42, because they actually show what calculations were made, step by step. They also make plain that the explanation Mr. Hedberg gave at the hearing was not accurate.

During the hearing, Mr. Hedberg said to take the full 852 units and reduce their trip generation by 15 percent for Metro proximity, then reduce that number for the existing units to be replaced or remain on site. The charts in Exhibit 133(a) show that the correct procedure, which makes more sense, is to first reduce the number of trips for the existing units to be replaced or to remain, then take the 15 percent Metro reduction. Mr. Hedberg also failed to explain at the hearing that the internal capture credit is applied twice: to the estimated residential trips *and* to the estimated retail trips. During the hearing, he explained that credit as though it were applied only to the retail trips. The Hearing Examiner does not believe that Mr. Hedberg intended to mislead at the hearing, but that he simply was not as familiar with the chart (which may have been prepared by a subordinate) as he should have been. Mr. Hedberg would have done better to state candidly at the hearing that he could not explain the chart, and offer to explain it in writing or at an additional hearing date.

c. Stage 1/Stage 2 Analysis

The Stage 1/Stage 2 Analysis found that under existing conditions, all of the intersections studied operate within their respective congestion standards. Thus, all 17 of the intersections studied are considered to have acceptable levels of congestion under LATR. Like the same finding in the Stage 1 Analysis, this contrasts starkly with testimony and photographic evidence indicating that the intersection of Randolph Road and Georgia Avenue experiences heavy peak period congestion on a routine basis.

The Stage 2 analysis included an intersection improvement that is planned for the intersection of Layhill Road/Bel Pre Road/Bonifant Road as a condition of a prior development approval. See Ex. 62(a) at 30. Background traffic consisted of eight approved projects, including the Indian Springs subdivision with 773 dwelling units, the new Glenmont Metro Parking Garage, the Plaza del Mercado expansion, estimated to generate 33 trips during the morning peak hour and 133 trips during the afternoon park hour, and several projects expected to generate very small numbers of trips during the peak hours. See *id.* at 33. Northbound through traffic was decreased by ten percent at intersections south of the access roads to the Metro garages, as in the Stage 1 analysis. In addition, trips from developments that were “considered to be more locally based” (Plaza del Mercado and the Mid-County Community Recreation Center) were not carried south of Glenallan Avenue. Thus, those trips did not reach the Georgia Avenue/Randolph Road intersection.

Background traffic was assigned to the road network according to a series of assumptions in the LATR guidelines and other data provided by Technical Staff. Intersection CLVs were then calculated, with the finding that all intersections would operate within their respective CLV standards except Georgia Avenue and Randolph Road, where the CLV would rise from 1,743 in the morning peak hour and 1,687 in the evening peak hour under current conditions, to 1,817 in the morning peak hour and 1,818 in the afternoon peak hour with background traffic. See *id.* at 29, 40.

The combined Stage 1 and Stage 2 of the proposed Glenmont Metrocenter development were estimated to generate 660 “Net New Trips” during the morning peak hour and 964 “Net New Trips” during the afternoon peak hour, using the same series of calculations described for

trip generation in the Stage 1 analysis. These trips were then distributed on the roadway network and intersection CLVs were calculated, with the finding that all intersections studied would operate at acceptable levels of congestion except the intersection of Randolph Road and Georgia Avenue, where the CLV was calculated at 1,952 in the morning peak hour and 1,898 in the afternoon peak hour. See *id.* at 46-47.

d. Proposed Roadway Improvement Traffic Mitigation

Because of this failing intersection, the Applicant was required to propose measures to mitigate its traffic impacts. The Applicant proposed two at-grade improvements to Georgia Avenue, which were recommended in the Sector Plan as short-term improvements, and were approved as traffic mitigation in the Indian Springs subdivision case. The two improvements are:

1. Adding a fourth through/right turn lane on the southbound approach of Georgia Avenue to Randolph Road; and
2. Adding an exclusive right turn lane from northbound Georgia Avenue to eastbound Randolph Road.

The two improvements proposed would widen Georgia Avenue, adding an additional lane in each direction. With these additional lanes, the traffic study reported that the CLV at Georgia Avenue and Randolph Road would be reduced to 1,656 in the morning peak hour and 1,685 in the afternoon peak hour. Thus, these improvements would satisfy LATR.

The traffic study states that in lieu of the at-grade improvements the Applicant could, at the time of subdivision, make a pro-rata contribution to funding the grade-separated interchange at Georgia Avenue and Randolph Road that has been planned and designed by the SHA. There is no specific analysis in the traffic study to demonstrate that the grade-separated interchange would lead to a CLV below the congestion standard, but both Transportation Planning Staff at MNCPPC and the SHA have expressed a clear preference for contributions to the grade-separated interchange instead of the at-grade improvements. See Transportation Planning Memorandum of May 23, 2007, attached to Staff Report; SGA letter at Ex. 90. This suggests that the grade-separated interchange would improve traffic conditions at the intersection more than the at-grade improvements. The Applicant is

not permitted to rely on the grade-separated interchange for purposes of LATR, however, because the interchange is not fully funded for construction. See LATR Guidelines at 31. Thus, the Applicant was obligated to proposed alternative measures that would satisfy LATR.

The District Council can only consider traffic mitigation measures that are reasonably probable of fruition in the foreseeable future. See *Montgomery County v. Greater Colesville Citizens Association*, 70 Md.App. 374 (1987). The record in this case suggests strongly that there is considerable momentum behind the grade-separated interchange, and that it is more likely to go forward than not. However, it is a major roadway project that may yet face hurdles before funding is in place. Moreover, the record suggests a risk that if the Indian Springs subdivision moves forward more quickly than the funding for the interchange, the developer in that case may build the at-grade improvements, which may decrease the momentum for a grade-separated interchange. The SHA has stated that it does not envision building the at-grade improvements, then ripping them out to build a grade-separated interchange. See Ex. 75. Most importantly, given that LATR specifically prohibits an applicant from relying on a government sponsored improvement that has not been fully funded for construction within four years, the Hearing Examiner considers it inconsistent with county policy and therefore inappropriate for the Council to rely on an unfunded improvement in a rezoning case. Ultimately, if the project goes forward it will be up to the Planning Board to determine during subdivision and site plan review what contributions or improvements the Applicant must make to mitigate its traffic impact. Nonetheless, the Hearing Examiner concludes that at this stage, the District Council should evaluate these applications based on the proposed at-grade roadway improvements.

Community member Richard Kauffunger introduced considerable testimony and other evidence to support an argument that the proposed at-grade improvements should not be accepted as mitigation because they are not feasible, due to right-of-way and parkland impacts. In the Hearing Examiner's view, Mr. Kauffunger's efforts in this regard were unsuccessful. He did demonstrate that Mr. Hedberg had limited knowledge about right-of-way issues, one of the factors that should have influenced his stated opinion that the at-grade improvements are feasible. Mr. Hedberg's opinion on that question was apparently based heavily on the fact that the same improvements were approved

as traffic mitigation in the Indian Springs case. See Ex. 62(a) at 19; Tr. July 24 at 68, 78.. Mr. Hedberg is not personally familiar with how much land would be needed for right-of-way, which government entity owns the land occupied by the Glenmont Greenway park along the west side of Georgia Avenue, what the lane widths are at this intersection and why most of them are below-standard in width, or what the process is for using parkland as roadway right-of-way. See Tr. July 24 at 74-78. He did testify, however, that the right-of-way needed for the at-grade improvements is similar to what would be needed for the grade-separated interchange, and that with the State and the County behind the plan to improve traffic conditions at Georgia Avenue and Randolph Road, they could use their governmental authority to obtain right-of-way if necessary.

A similar conclusion was reached in the Indian Springs subdivision case. In that case, the Staff Report stated that the at-grade improvements were not feasible due to right-of-way and parkland impacts, but at the Planning Board's hearing Staff reversed its conclusion, finding that the at-grade improvements are feasible because they can be accommodated within the right-of-way needed for the grade-separated interchange. See Exs. 119, 123. Staff explained at the hearing that if the at-grade improvements are built, the SHA intends to construct them itself with funds from contributing developers, so the State would handle the right-of-way acquisition. See Planning Board transcript at 313, attached to Ex. 123.

Mr. Kauffunger's suggestion that certain language in the traffic study that was submitted in the Indian Springs case supported a finding that the proposed at-grade improvements are not feasible was refuted persuasively in a letter submitted into this record, after the hearing, by the author of that study. See Attachment 2 to Exhibit 142. Mr. Kauffunger also constructed an interesting theory that very narrow turning lanes at the Georgia Avenue/Randolph Road intersection, which were put in shortly after the Glenmont Metro was built, indicate that WMATA (which owns some of the land that would be needed for right-of-way) has refused to provide right-of-way to the SHA. Without any factual evidence to support the theory it is difficult to place any weight on it, particularly in face of the more persuasive findings by Technical Staff, the Planning Board and the SHA.

For all of these reasons, the Hearing Examiner concludes that the proposed at-grade improvements to Georgia Avenue may be considered feasible traffic mitigation measures under LATR.

e. Potential Non-Roadway Traffic Mitigation

The LATR Guidelines authorize the Planning Board to permit a reduction in the amount of roadway improvements or traffic mitigation needed to satisfy LATR in exchange for the installation or construction of “non-automobile transportation amenities that will enhance pedestrian safety or encourage non-automobile” travel choices. See LATR Guidelines at 26. These may include sidewalks, bike paths, curb extensions, pedestrian countdown signals, bus shelters and benches, bike lockers and static or real-time transit information signs. See *id.* A developer can get “trip credits” for such amenities, which reduce the number of trips a project is projected to generate. The number of trip credits given for any particular amenity is higher in the Metro station policy areas, as is the maximum number of credits available. In a Metro station policy area, a project may garner up to 120 trip credits, including, for example, 20 credits for a real-time transit information sign, one credit for every 100 linear feet of five-foot sidewalk or eight-foot bike path, and three credits for a pedestrian countdown signal at an intersection. See *id.* at 29. The maximum number of credits available for a project in a Metro station project area is 120. See *id.*

Mr. Hedberg testified that during its consideration of these applications, the Planning Board expressed a strong interest in pedestrian and transit-related amenities. Mr. Hedberg stated that if the Applicant can obtain the maximum 120 trip credits for providing such amenities, it will be able to build approximately 220 townhouses, 300 multi-family units, or some combination of the two, without making any roadway improvements. See Tr. July 16 at 141-142; Ex. 107.

The LATR Guidelines also permit traffic mitigation to be provided in the form of transportation demand management strategies, such as transit or ridesharing services. See LATR Guidelines at 19. Mr. Hedberg testified that the Applicant has a strong interest in providing a neighborhood circulator shuttle to bring area residents to the Metro station. This can be considered to take trips off the local roadway network, mitigating some of the trips the proposed development would

add. Mr. Hedberg conceded that he has not personally been involved in creating a neighborhood circulator shuttle, but he estimated that a good shuttle could take enough trips off the roads during the peak hours to allow the Applicant to build an additional 35 dwelling units.

With the combination of trip credits and a shuttle, Mr. Hedberg estimated that the Applicant could receive authorization to build between 255 and 335 new units (depending on the mix of townhouses and multi-family units) without making any roadway improvements. This would be in addition to 275 replacement units in Stage 1, which are not considered to generate any new traffic. Thus, the Applicant has the potential to build between 255 and 335 new units and 275 replacement units based on transit and pedestrian-safety improvements. This would not relieve the Applicant of the obligation to make the proposed at-grade roadway improvements in order to complete Phase 1, but it would allow the Applicant to begin construction on Stage 1 while waiting for the grade-separated interchange to be funded. As will appear more fully in the next section, the Hearing Examiner is concerned about the impact of the subject development on congestion at the Randolph Road/Georgia Avenue intersection. Trip credits for non-roadway traffic mitigation may exacerbate problems at that location by allowing new development without remedies particular to that intersection. No evidence was presented as to how much the CLV at the intersection of Randolph Road and Georgia Avenue would increase due to the trips that the 255 to 335 new units would generate, or whether the non-roadway improvements would reduce congestion at that intersection in a way that would partially or fully offset the impact of the new trips.

f. Adequacy of Traffic Study to Demonstrate Compatibility

Potential adverse traffic impact is an important consideration with regard to compatibility. Typically, evidence that the requirements of LATR are satisfied has been considered sufficient for a rezoning applicant in Montgomery County to demonstrate that the project's traffic will not have an adverse impact on the surrounding area. In the present cases, however, the evidence calls into question whether the submitted LATR evidence is sufficient for the Applicant to meet its burdens of proof and persuasion. The Applicant bears the burden to demonstrate that it is more likely than not (the "preponderance of the evidence" standard) that the proposed development will not have

an adverse impact on traffic conditions in the surrounding area. Based on the evidence submitted to date, the Hearing Examiner concludes that the Applicant has not met that burden.

First, the traffic study is not flawless. Mr. Kauffunger pointed out that on page ten, which shows how background traffic was assigned to the roadway network for Stage 1, boxes seven and four display some confusing data. See Tr. July 24 at 55. They show a breakdown of southbound traffic expected on Layhill Road when the background developments are completed, and how much of that stream of traffic makes it onto Georgia Avenue, and thence potentially to the intersection of Georgia and Randolph. The table shows 175 vehicles on Layhill Road going south through the intersection of Glenallan Avenue and Layhill Road during the morning peak hour. See *id.* Only 26 vehicles arrive at the next signalized intersection on Layhill Road, which is Georgia Avenue, a short distance away. This indicates that 148 vehicles exited Layhill Road between Glenallan Avenue and Georgia Avenue.

Mr. Hedberg stated during the hearing that there is an entrance to the Metro parking garage on Layhill Road, and he believes there was an assignment of 149 trips from southbound Layhill into that garage. Mr. Kauffunger remarked that he drives south on Layhill Road to the Glenmont Metro station, and he turns right on Glenallan Avenue to use the main Metro garage entrance. Mr. Hedberg offered no explanation for the implicit assumption that the vast majority of cars driving down Layhill Road in Glenmont (1) are heading to the Metro and (2) choose to use the Layhill Road entrance to the garage; he simply stated that he got the numbers from a traffic study that Metro prepared, which was in the background data for the Indian Springs subdivision and which Technical Staff provided to Mr. Hedberg as background data for these cases. Mr. Hedberg then expressed some confusion as to whether the 149 trips on Layhill Road were assigned to the existing Metro garage entrance or the proposed new Metro garage on the west side of Georgia Avenue. The Applicant's written rebuttal, submitted some weeks after the hearing, states that the new garage is assumed to increase traffic at the existing garage because the new garage will free up spaces in the existing one.

The Hearing Examiner finds it facially implausible that 85 percent of the morning peak hour southbound traffic on Layhill Road (149 out of 175 trips) is heading to the Metro station and chooses to use the Layhill Road entrance rather than the main entrance on Glenallan Avenue. It is likely that some vehicles went into the garage, and it may be that some of the 149 trips that dropped off between Glenallan Avenue and Georgia Avenue went into the gas station on the corner, Glen Way Gardens or the Glenmont Shopping Center. Mr. Hedberg's explanation that the new garage would lead to increased traffic at the existing garage makes some sense, because the new garage would draw cars approaching from the north and west, which might allow more of the spaces in the existing garage to be taken by area residents coming down Layhill from the northeast. It is, however, a slim explanation for assuming only 26 background trips would arrive at Layhill and Georgia in the peak hour of the morning peak period, in light of testimonial and photographic evidence that there can be that many cars waiting at one time to turn onto Georgia from Layhill in the morning. The Applicant had the opportunity on rebuttal to provide a more satisfactory explanation than "Technical Staff gave us that data," but chose not to do so.

Technical Staff permitted the Applicant to use an average of the four available traffic counts, rather than the higher counts that were taken in conjunction with the Indian Springs case. Mr. Hedberg was, understandably, unable to say at the hearing whether using the higher counts would have resulted in the intersection of Georgia Avenue and Randolph Road still exceeding the congestion standard, even after the proposed mitigation. In the Stage 1 analysis there was a fair amount of room, because the post-mitigation CLVs were 1,656 and 1,685, more than 100 below the congestion standard. In the Stage 2 analysis there is much less room: the post-mitigation CLVs were 1,748 in both morning and evening peak periods, only 52 conflicting movements below the congestion standard. The Applicant chose to rely on the methodology that was approved by Technical Staff and did not submit any additional evidence on this point on rebuttal.

In response to questions about how the new, fourth southbound lane on Georgia Avenue would merge into the three southbound lanes south of the Randolph Road intersection, Mr. Hedberg noted that the merge pattern has not been designed, so he cannot provide details. He

opined that the merge can be done safely, but conceded that the merge could create delays on the south side of the intersection. The Applicant chose not to submit any additional evidence as to whether those delays would make the cure worse than the problem.

The Applicant's trip generation calculation reduced the trips expected from the proposed development by the number of trips that would normally be expected from the existing 352 units. It is undisputed, however, that the existing apartment complex on the site has a high vacancy rate. Community member Vicki Vergagni stated in a post-hearing submission that there are currently 219 residents at the existing complex. See Ex. 134(a). This could argue for a smaller reduction in trips for the replacement units, which arguably are likely to generate more residents, and therefore more traffic, than the number of people actually living on the site today.

The most important weakness of the traffic study is not, however, related to an error or a faulty assumption. It relates to the CLV methodology that LATR employs. When Mr. Kauffunger asked Mr. Hedberg (the Applicant's traffic expert) whether the CLV technique has any shortcomings, Mr. Hedberg replied that it only measures conflicting movements that go through an intersection, which could be considered a shortcoming. See Tr. July 24 at 84-85. Mr. Hedberg observed that if there is something preventing the flow of traffic through an intersection, such as an accident, the CLV count will be relatively low because cars are not moving. Mr. Hedberg acknowledged that an intersection with heavy congestion may not have a high CLV because the congestion limits the number of vehicles that can get through. See *id.* at 85-86. He argued, however, that an intersection with that much congestion will normally exceed the congestion standard when background traffic is added in, because the background traffic is just numbers added to the traffic counts – background traffic cannot be blocked by conditions on the ground. See *id.* at 86. Mr. Hedberg also observed that when intersections are closely spaced, there may be back-ups between them if the signal timing is not well-coordinated. See *id.* at 87.

Mr. Kauffunger described conversations he had with two transportation professionals at the University of Maryland and two SHA officials, all of whom agreed, with varying degrees of vehemence, that the CLV technique has serious limitations. See discussion in Part III.H below, under

Kauffunger paragraph 5. One of the academics he spoke with explained that when intersections are close together, CLV fails to measure the effect of spillback from one intersection to the one before it. See *id.* at 280-81. The other academic described CLV analysis as very dangerous to use with congested intersections because it measures only the traffic that signals let through, not the number of vehicles trying to get through. See *id.* at 282-83. The Administrator of the SHA, Neil Peterson, stated that CLV is very unreliable in relation to unstable, over-capacity intersections. See *id.* at 283-84. The weight to be given to these remarks is limited by the fact that they are all hearsay – Mr. Kauffunger was repeating statements that others made to him outside the hearing room, for the purpose of proving that what they said is true. Such remarks would carry a great deal more weight if the speakers were present in the hearing room, subject to cross-examination, or even if they were made in a signed writing. The hearsay testimony is entitled to some credence, nonetheless, because it is consistent with Mr. Hedberg's testimony and because hearsay may be admitted in administrative proceedings if it appears to be reliable and probative. See Code §2A-8(e).

More persuasive than the theoretical discussion of the limitations of CLV as a technique is the overwhelming evidence that the intersection of Georgia Avenue and Randolph Road is seriously congested, with lengthy back-ups common during the peak hours. Mr. Hedberg testified that in his two or three peak-hour visits to the intersection, the worst back-up he saw on Georgia Avenue was approaching the Layhill Road intersection, which he estimated to be a distance of about 800 feet. See Tr. July 24 at 82-84. Community member Vicki Vergagni testified that it is not unusual for through traffic on Georgia Avenue back up from Randolph Road past the intersection with Layhill Road and even past the intersection with Glenallan Avenue. See Tr. July 24 at 151. She added that it may take three or four lights to turn left from Georgia Avenue to Layhill, and it is often impossible to turn left from Layhill onto Georgia Avenue because traffic on Georgia is not moving, and there is no where to go. Community member Susan Lois Johnson described the intersection of Georgia Avenue and Randolph Road as "failing." See Tr. June 29 at 204; Ex. 97. Community members Ann Ambler, Max Bronstein and Michael McAteer complained that the intersection of Randolph Road and Georgia Avenue is heavily congested during peak hours. See Part III.F. above. Mr. Kauffunger testified that

lengthy back-ups at this intersection are common during the peak hours, and submitted photographic evidence to support his claim.

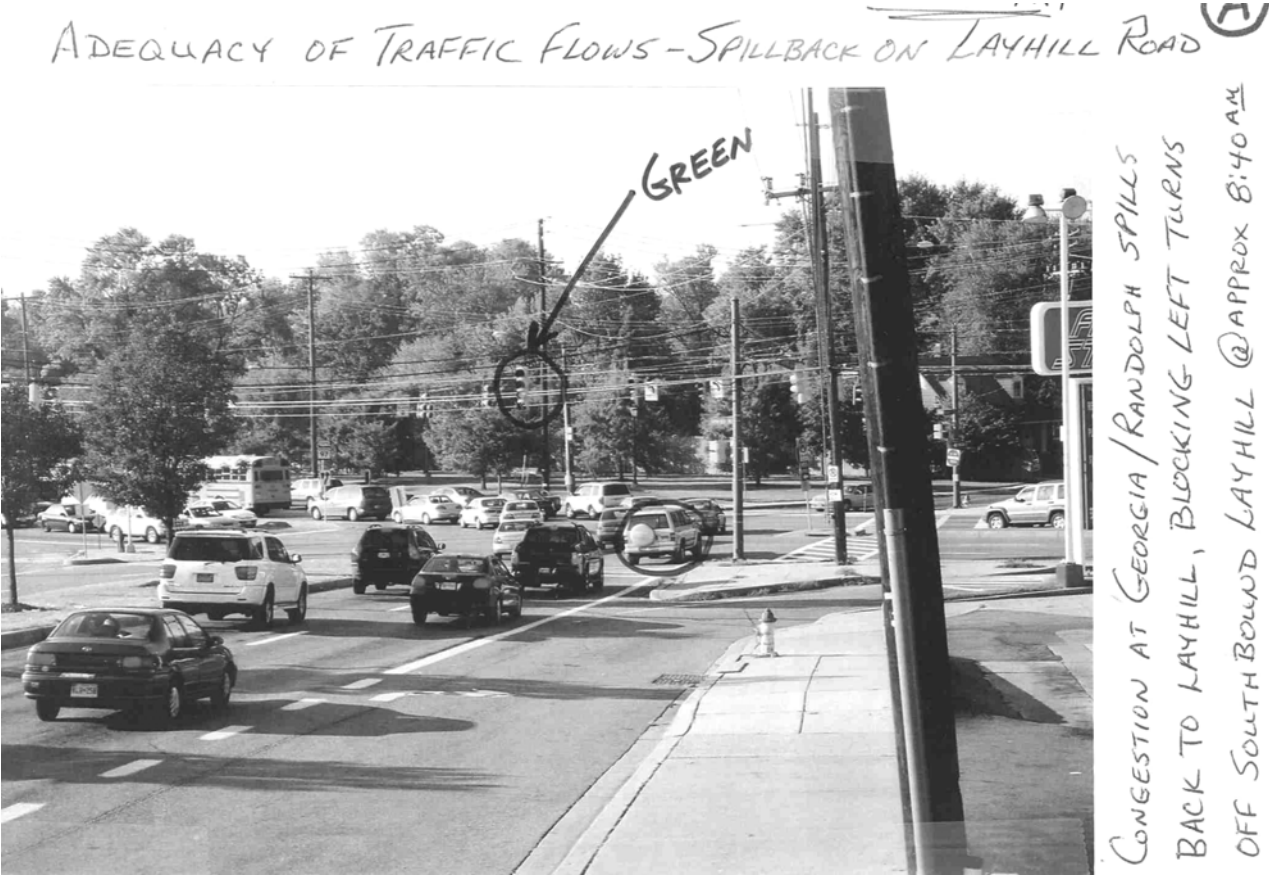
Mr. Kauffunger presented photographs of vehicles waiting to go through the intersection of Georgia Avenue and Randolph Road, which he took on Wednesday and Thursday, September 6 and 7, 2006¹⁵ to show to the Planning Board in connection with the Indian Springs subdivision case. See Tr. July 24 at 285-86; Exs. 121(a) through (d). Mr. Kauffunger stated that the photographs show the kind of queuing that has taken place on Layhill Road for the last 20 years. The first two photographs, reproduced on the next page, were taken at about 8:40 a.m. They show congestion on Georgia Avenue (which Mr. Kauffunger states is the back-up from Georgia Avenue and Randolph Road) blocking left turns from southbound Layhill Road onto Georgia Avenue. See Ex. 121(a). Even with a green light on Layhill, Mr. Kauffunger points out, the photographs show almost no space for cars to get off of Layhill Road onto Georgia Avenue, because all the lanes are filled by through traffic. He described this as a typical morning.¹⁶ Mr. Kauffunger pointed out one vehicle that can be seen making the left turn by pulling around the side of the far-right lane, almost into the side street opposite Layhill Road, apparently hoping to get into the southbound lanes of Georgia Avenue when the light turns green on Georgia. See Tr. July 24 at 287-88.

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¹⁵ The photos were taken the day before and the day of the Planning Board's initial hearing in the Indian Springs subdivision case. See Tr. July 24 at 317; Planning Board Resolution approving Preliminary Plan No. 120060510 at 1.

¹⁶ The fact that the photographs were taken immediately before the Planning Board hearing at which they were first used makes it unlikely that Mr. Kauffunger set out to choose a day with particularly bad traffic.

Georgia Avenue Traffic Blocking Left Turns from Layhill Road, Ex. 121(a) top photo



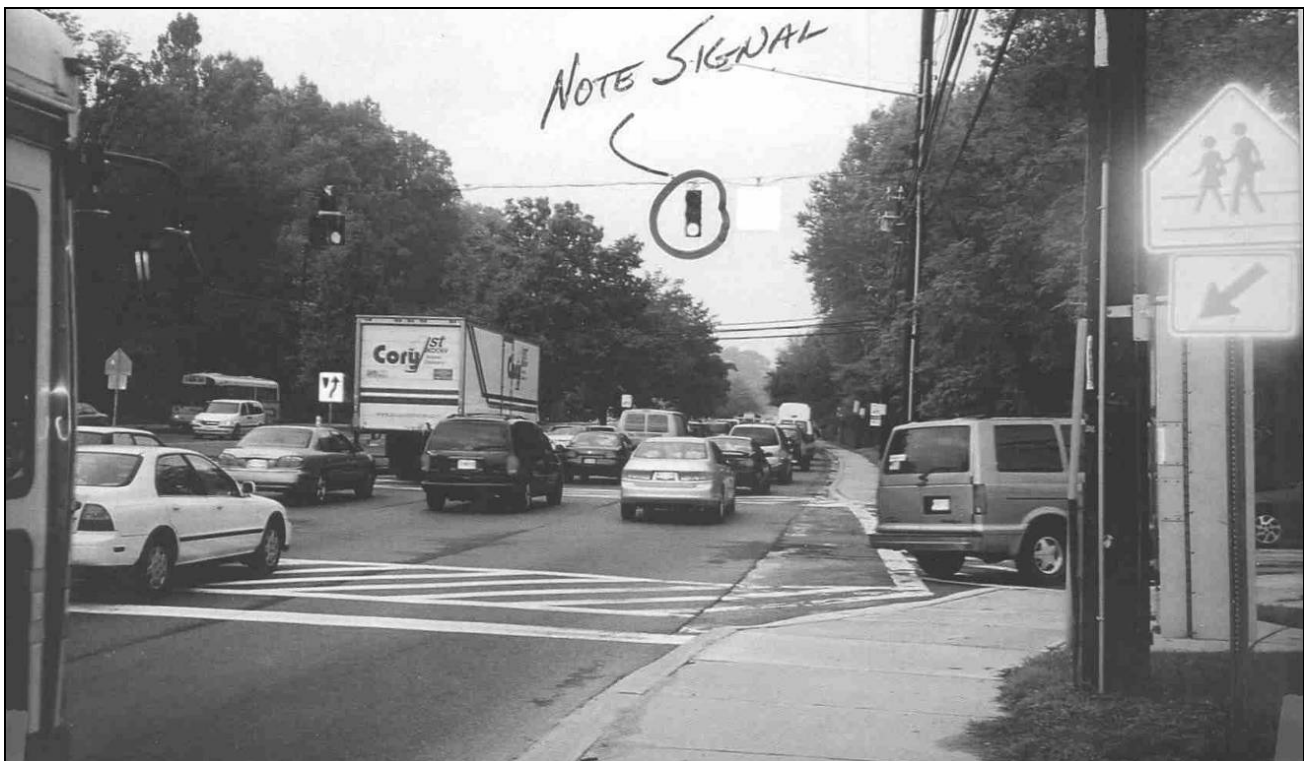
Georgia Avenue Traffic Blocking Left Turns from Layhill Road, Ex. 121(a) bottom photo



The second set of photographs, reproduced on the next page, shows the back-up on Layhill, approaching Georgia Avenue, at about 8:35 a.m. See Ex. 121(b). Mr. Kauffunger counts about 26 cars waiting to turn south on Georgia Avenue, and notes, as seen in the photographs, that the back-up extends through the intersection of Layhill Road and Glenallan Avenue. See Tr. July 24 at 288. Mr. Kauffunger maintains that the line of cars backed up on Layhill Road frequently extends past the Metro train yard. He observed that conditions did not improve when Layhill Road was widened, because the back-up all emanates from the intersection of Georgia Avenue and Randolph Road.

A single photograph on Exhibit 121(c), reproduced below, shows queuing on Randolph Road during the weekday morning peak period. See Tr. July 24 at 289. This photograph was taken at 8:33 a.m. and shows traffic backed up on Randolph Road to Middlevale Lane, which is two traffic lights away from Georgia Avenue, north of Randolph Road's intersection with Glenallan Avenue.

Traffic on Randolph Road Backed up Two Traffic Lights Away, Ex. 121(c)



TRAFFIC QUEUE AT RANDOLPH ROAD / MIDDLEVALE
LANE INTERSECTION AT 8:33 AM. BUMPER TO
BUMPER TRAFFIC EXTENDS THROUGH TWO
SIGNALIZED INTERSECTIONS ALL THE WAY
TO GEORGIA AVENUE.

Layhill Road Traffic Waiting to Turn Onto Georgia Avenue, Ex. 121(b) top photo

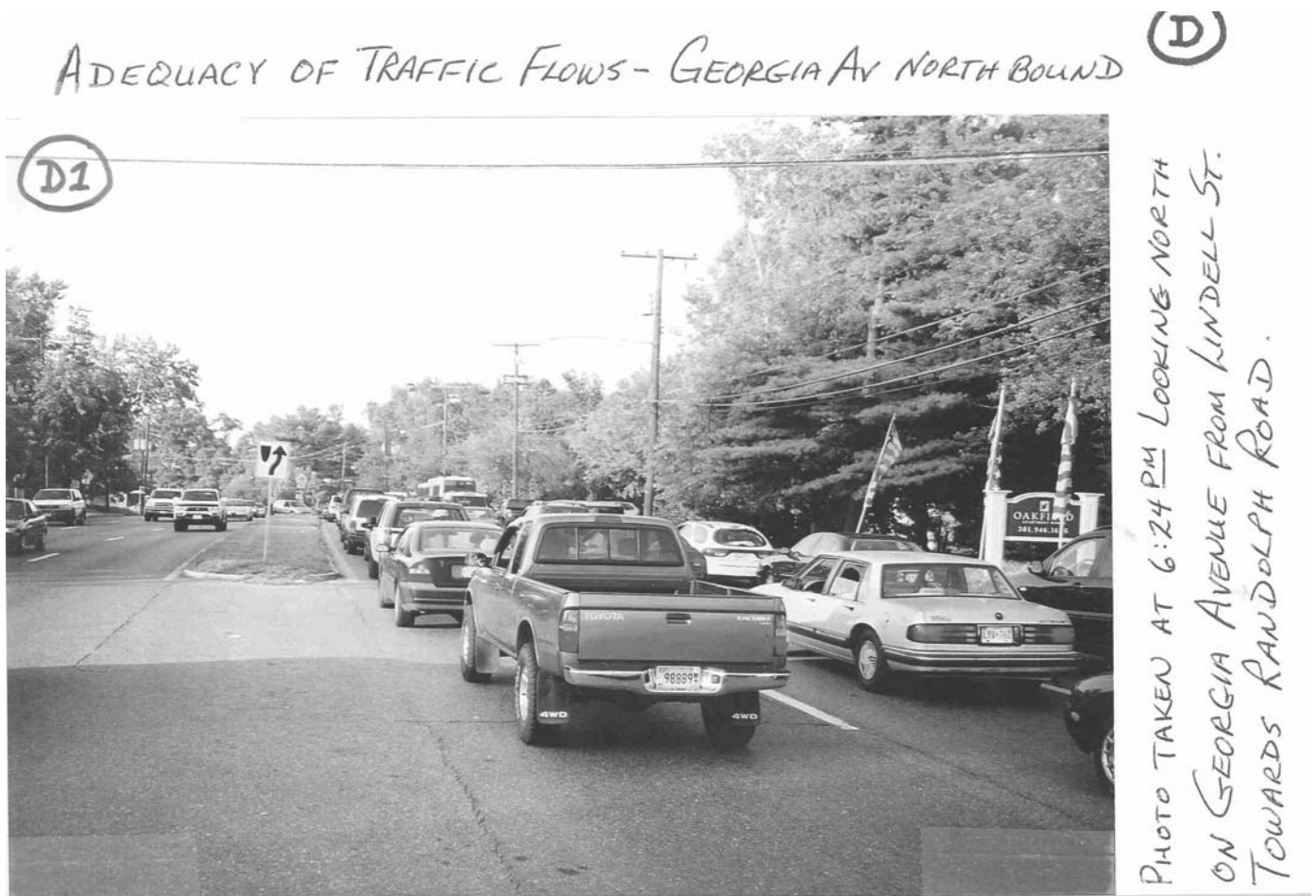


Layhill Road Traffic Waiting to Turn Onto Georgia Avenue, Ex. 121(b) bottom photo

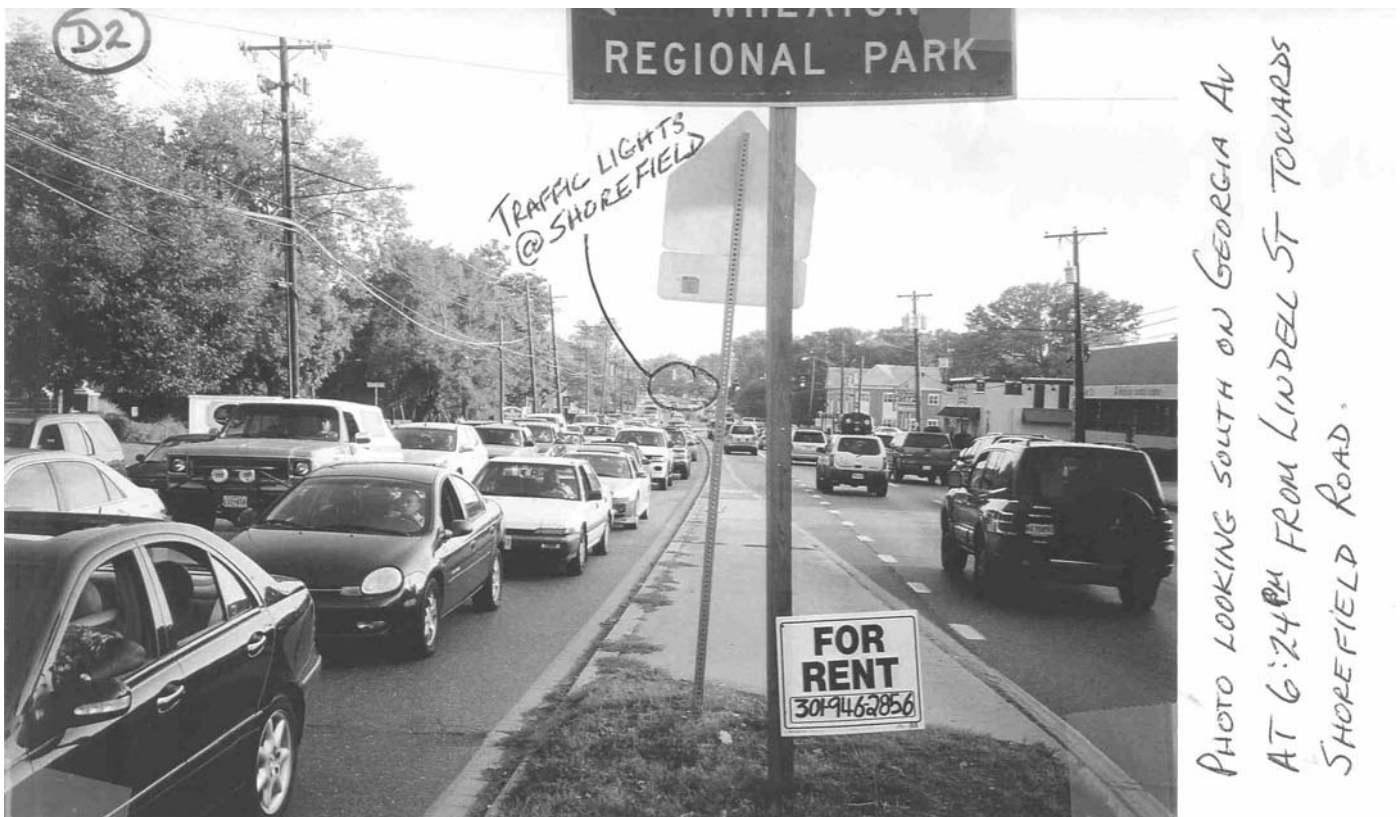


Mr. Kauffunger's fourth photographic exhibit, reproduced below and on the next page, shows traffic sitting on Georgia Avenue during the weekday afternoon peak period, at 6:24 p.m. See *id.* at 290; Ex. 121(d). The photograph shows a solid line of cars backed up on northbound Georgia Avenue through its intersection with Lindell Street and extending to the traffic light at Shorefield Road.

**Georgia Avenue Traffic Backed up to Shorefield Road Traffic Light, Ex. 121(d) top photo
Looking North on Georgia Avenue from Lindell Street**



**Georgia Avenue Traffic Backed up to Shorefield Road Traffic Light, Ex. 121(d) bottom photo
Looking South on Georgia Avenue from Lindell Street**



Mr. Kauffunger contends that a rezoning application that would add to the very long queues shown in the photographs should not be approved. See Tr. July 24 at 290. In addition to the photographs, he submitted a letter that he wrote to the Planning Board Chair in connection with the Indian Springs case, in which he stated that studies he and a fellow community member conducted show that during the afternoon peak period, it can take between $8 \frac{1}{2}$ and $9 \frac{3}{4}$ minutes to get from the point on Layhill Road where the congestion starts, usually somewhere between Glenallan Avenue and the Metro rail yard, through the Georgia Avenue intersection. The distance is about four tenths of a mile, which Mr. Kauffunger calculates to be the equivalent of about three miles per hour. His studies also show that on westbound Randolph Road during the afternoon peak, it takes $7 \frac{1}{2}$ to 8 minutes to go from Tivoli Lakes Boulevard to Georgia Avenue.¹⁷

¹⁷ Measuring on an ADC map of Montgomery County, the Hearing Examiner estimates this distance at about one mile.

The Applicant did not attempt to refute the testimony and photographic evidence of lengthy back-ups on Glenmont roads caused by congestion at the intersection of Randolph Road and Georgia Avenue, nor did the Applicant attempt to refute the evidence that CLV is a poor technique to measure whether a congested intersection is operating at an acceptable level. The Applicant considers evidence about the limitations of CLV analysis irrelevant to these proceedings, because CLV is the technique prescribed in the LATR Guidelines. See Ex. 142 at 51. The Applicant has chosen to stand on the argument that it satisfied LATR and nothing more is required.

The Hearing Examiner is persuaded that regardless of its theoretical value as a measure of traffic congestion, in these cases, CLV analysis failed to adequately assess traffic conditions at Georgia Avenue and Randolph Road. Even assuming that its flaws are not enough to undercut its findings, the LATR study concluded that the intersection of Georgia Avenue and Randolph Road operates at an acceptable level currently, and would continue to do so with the proposed development and associated at-grade improvements to Georgia Avenue. The picture painted by CLV analysis, however, suggests that the intersection is operating acceptably, because the number of conflicting movements going through the intersection is below the level of congestion the County considers acceptable in a Metro area. See Ex. 62(a) at 6. Yet, testimony from Mr. Hedberg and community members, supported by Mr. Kauffunger's photographs and unrefuted by any contrary evidence, establishes that under current conditions the intersection is heavily congested, and is not operating in a manner that any reasonable person would consider acceptable.

Working from the premise that the intersection is working properly, the traffic study goes on to calculate that although background traffic and Stage 1 of the proposed development would cause the intersection to exceed the congestion standard slightly, and Stage 2 would cause the intersection to exceed the congestion standard by a much larger margin, the proposed at-grade improvements would bring the intersection significantly below the congestion standard with Stage 1, and slightly below it with Stage 2. All of these conclusions are based on the faulty premise that the intersection is operating at an acceptable level under current conditions, a premise that is undercut by the unrefuted evidence of serious congestion.

In addition to the evidence related to the traffic study itself, the Hearing Examiner is concerned by the lack of evidence about conditions at the intersection of Randolph Road and Georgia Avenue if the applicant is able to build between 255 and 335 new units, as well as the 275 replacement units, based on non-roadway improvements. Such improvements are important, and would undoubtedly be beneficial to pedestrians and transit users – indeed, some of the community members who participated in the hearing would prefer transit improvements to roadway improvements – but nonetheless, the question of whether the net result for the community would be a benefit or an adverse impact has not been explored. It may be that non-roadway improvements would draw people out of their cars and onto transit, taking enough trips off the roads to offset the traffic impact of the new units, but the Applicant did not submit any evidence to that effect.

It is clear from the ruling of the Maryland Court of Appeals (Maryland's highest court) in *Tauber v. Montgomery County Council*, 244 Md. 332, 223 A.2d 615 (1966), that the Council may reject a rezoning application based on evidence of traffic problems that counters expert testimony indicating no adverse impact. The court in *Tauber* upheld the Council's rejection of a rezoning request, finding that there was sufficient evidence before the District Council to make the issue of traffic impact fairly debatable. It is important to note that the phrase "fairly debatable" is key to the standard of review used by the Maryland courts in reviewing rezoning decisions. If an issue is fairly debatable, the courts may not substitute their judgment for that of the District Council on that issue, and the District Council must be upheld on that issue. See *id* at 337.

The court in *Tauber* described the evidence before the District Council in the following manner:

The Technical Staff of the Maryland-National Capital Park and Planning Commission recommended approval of the application but the Montgomery County Planning Board declined to accept this recommendation and recommended denial because in its opinion the request for rezoning was premature and would create "a potentially hazardous and undesirable traffic situation." At the hearing on July 30, 1964, before the District Council, the applicants presented expert testimony indicating that the proposed development would not generate sufficient traffic to have a significant effect upon the operational safety of the adjacent streets. This opinion, however, was based upon a traffic count for one hour in the morning and one hour in the afternoon of

February 7, 1964, at the intersection of Massachusetts Avenue and Westbard Avenue [*i.e.*, an LATR type of analysis]. Certain witnesses for those protesting against the granting of the application, testified that there were severe traffic conditions at the intersection. One witness testified that at times the traffic was backed up from the intersection in both directions for over one-half a mile and that there had been a number of accidents at what he described as a traffic bottleneck. There was other testimony on behalf of the protestants indicating a dangerous traffic condition at the intersection which would be aggravated by the erection of the proposed apartment house.

The rationale of the *Tauber* decision was also applied by the Court of Appeals in the context of an application for rezoning to the R-T Zone, in *Montgomery County v. Laughlin*, 255 Md. 724, 259 A.2d 293 (1969), where the court again upheld a decision of the District Council denying a rezoning application on grounds that traffic impacts rendered the application incompatible with the surrounding area. In that case the Applicant did not present a traffic expert as a witness, choosing to rely on a land planner to discuss traffic impact. The Council found the neighbors' testimony about traffic capacity and hazards more persuasive. See 255 Md. at 731.

In the Hearing Examiner's estimation, the present Applicant has not met its burden of demonstrating compatibility with regard to traffic impacts for either Stage 1 or Stage 2. It is possible, however, that with an opportunity to provide additional evidence, the Applicant may be able to meet its burden and allow approval of a development that is otherwise consistent with county policies and in the public interest. Accordingly, the recommendation of this report is to remand these cases to the Hearing Examiner to give the Applicant the opportunity to present additional evidence (1) concerning traffic conditions at the intersection of Randolph Road and Georgia Avenue, such as a queuing and delay analysis; (2) to show what steps the Applicant is willing to take to mitigate its traffic impacts, which may include but need not be limited to the at-grade improvements already proposed; and (3) to demonstrate that the proposed mitigation would prevent adverse traffic impacts on the surrounding area from Stage 1 and Stage 2 of the proposed Glenmont Metrocenter.

The Hearing Examiner makes this recommendation with due recognition that it represents a departure from the District Council's typical approach to traffic analysis in rezoning

cases.¹⁸ It is also a departure from the Planning Board's policy that satisfying LATR is sufficient to demonstrate that a project will not have an adverse effect on traffic conditions. I cannot recommend approval on the evidence before me, because in my judgment the traffic evidence the Applicant has submitted does not demonstrate that the traffic anticipated from the proposed development would not have an adverse impact on the surrounding area. However, the District Council possesses considerable discretion in these matters. The Council may choose to make a policy decision that satisfying LATR is adequate, or to weigh the evidence differently than the Hearing Examiner has done, and conclude that the evidence in this case is not sufficient to warrant requiring more evidence than the LATR Guidelines call for. If the District Council elects to take either of these courses of action, the record contains substantial, probative evidence that would support a decision to grant the requested rezonings. Should the District Council agree with the Hearing Examiner's conclusions but not wish to give the Applicant a chance to bolster its case, the evidence would also support a denial of both applications on grounds of incompatibility.

3. Utilities

Testimony from the Applicant's civil engineering expert, Daniel Pino, indicates that water, sewer and gas lines are available on and near the subject property, as well as electric service. See Tr. June 29 at 21, 40. He opined that public utilities would be sufficient to accommodate the proposed development for Stage 1 and Stage 2 independently. See *id.* at 40.

4. Schools

The subject property is located in the Georgian Forest Elementary School and Glenallan Elementary School attendance areas. See letter dated March 6, 2007 from Bruce Crispell, Montgomery County Public Schools ("Crispell letter"), attached to Staff Report. At the middle school level, the property is within the Middle School Magnet Consortium area, where students choose from

¹⁸ While it is not "typical," the District Council has, in the past, considered evidence concerning traffic congestion outside the LATR structure in deciding to remand a zoning application for further evidence regarding traffic and other issues. See LMA G-809.

three middle schools. At the high school level, the property is within the John F. Kennedy High School base area, which is part of the Downcounty Consortium, where students may choose to attend their base high school or one of four others.

Based on average yield factors developed by MNCPPC, Montgomery County Public Schools ("MCPS") expects the proposed development to generate approximately 103 elementary school students, 75 middle school students and 79 high school students. See Crispell letter. According to MCPS capacity calculations, enrollment exceeds capacity at the two elementary schools and is projected to exceed capacity in the future. See *id.* Enrollment at all three middle schools and at John F. Kennedy High School is currently within capacity and is projected to remain within capacity. See *id.* However, Bruce Crispell, MCPS's Director of Long-range Planning, stated in a recent email to Applicant's counsel that while the County's current Capital Improvement Program does not address overcrowding at the relevant elementary schools, he is "confident that the upcoming capital improvements program (FY 2009-2014) will identify a facility plan that will eliminate the elementary school overutilization at Glenallan ES and Georgia Forest ES in the coming six-year planning period." See Ex. 110. He added that addressing the elementary school space deficits in the Kennedy Cluster is a high priority for MCPS capital programming.

The Planning Board is required under the Growth Policy to determine, for each fiscal year, whether each school cluster has adequate capacity under the Growth Policy test to permit approval of additional subdivisions. The results of the Planning Board's school capacity evaluation for Fiscal Year 2008 are provided in a document entitled "Final Draft 2007-2009 Growth Policy, Toward Sustainable Growth for Montgomery County: A Growth Policy for the 21st Century," which the Planning Board submitted to the County Council on May 21, 2007.¹⁹ This document includes a chart at page 199 that summarizes the results of various types of school capacity tests. Using the current Growth Policy test, all school clusters have sufficient capacity to approve additional subdivisions in FY 2008. Under the current Growth Policy test with a change to reduce the accepted level of enrollment

¹⁹ The Hearing Examiner hereby takes official notice of the Planning Board's May 21, 2007 Growth Policy submission.

from 105 percent to 100 percent, all clusters except Clarksburg pass the test. Under the current Growth Policy test with a change to reduce the accepted level of enrollment from 105 percent to 95 percent, the Kennedy cluster (to which the subject development would send students) would fail the capacity test at the elementary level. The Kennedy cluster also would fail if the MCPS capacity test were applied.

At least two community members raised concerns about school overcrowding, but no specific evidence was introduced. The Applicant argues that it is sufficient to find that the current Growth Policy test finds school capacity adequate in all clusters for FY 2008. The District Council has approved rezoning applications on the basis of the Growth Policy school capacity test, even where MCPS capacity calculations showed a school that was overcapacity and expected to remain so. The Hearing Examiner is not aware, however, of any instance in which the Council has approved a rezoning under such conditions where the expected number of students was of the magnitude anticipated here. Case law permits the District Council to deny a rezoning based on school overcrowding, on the theory that if a cup is full, even one more drop can cause it to overflow. See *Malmar Associates v. Board of County Commissioners for Prince George's County*, 260 Md. 292, 307, 272 A.2d 6 (1971). There is evidence in the record, on the other hand, to support a Council decision that the rezonings requested here would not have an adverse impact on local schools, namely, Mr. Crispell's email stating that addressing elementary school space in the Kennedy cluster is a high priority for MCPS, and that he is confident that the upcoming CIP for 2009-2014 will identify a plan to eliminate the elementary school capacity problem in the Kennedy cluster. See Ex. 110. With no evidence presented to the contrary, the Hearing Examiner considers Mr. Crispell's email a sufficient basis to find that additional elementary school capacity is reasonably probable of fruition in the foreseeable future, and that, therefore, the proposed rezonings would not have an adverse impact on and would be adequately served by the public schools.

G. Environment and Stormwater Management

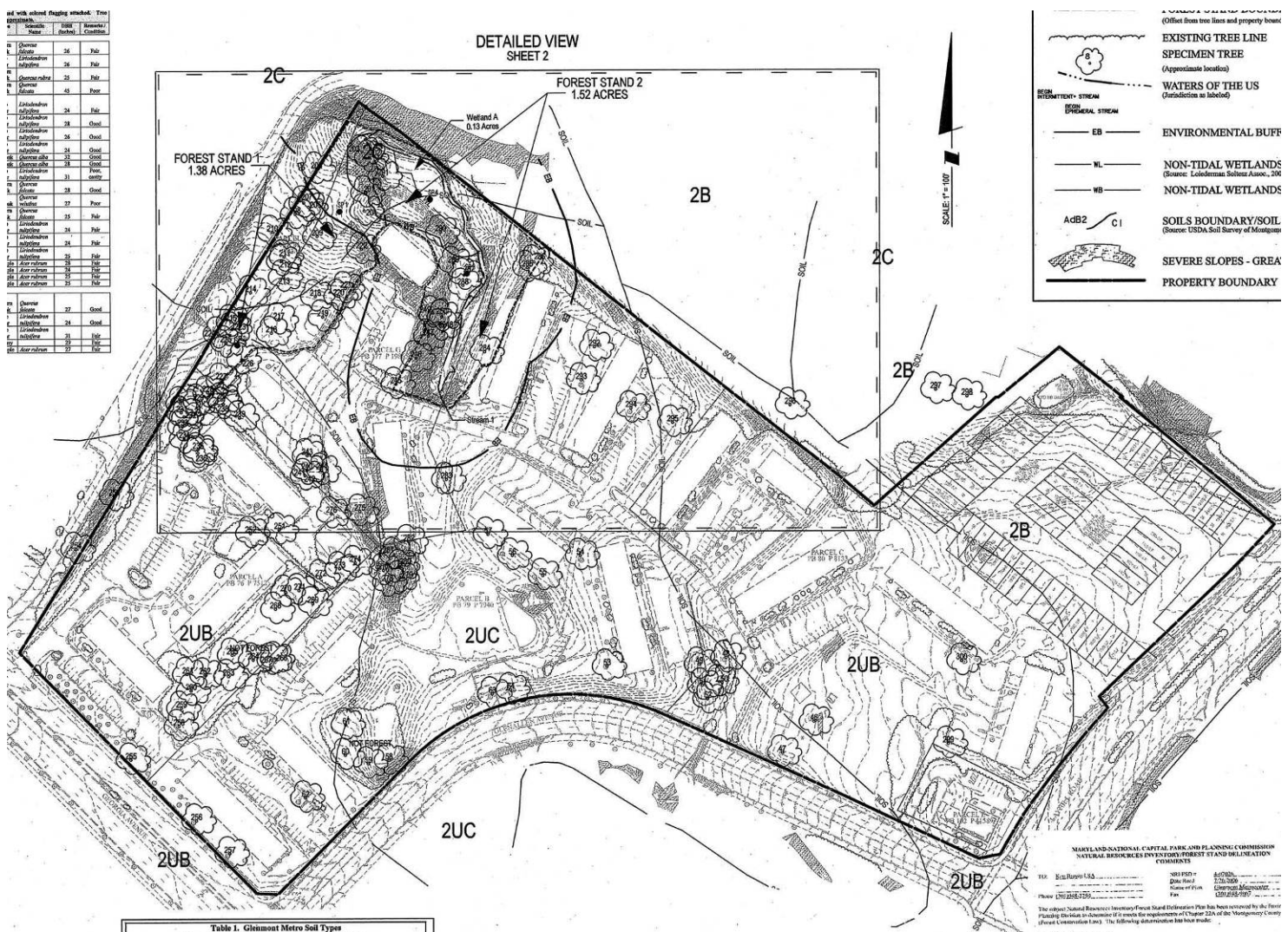
Testimony from two environmental experts indicates that the northern corner, where a stream fragment flows through the site, is the most environmentally sensitive area of the site. The Development Plan and other drawings identify an “environmental buffer” around the stream bed, which is designed to protect the stream from further damage and create conditions conducive to its recovery. All impervious surfaces, including buildings and roads, would be removed from the environmental buffer, and a substantial number of trees would be planted within the buffer. In addition, required stormwater management facilities would improve the quality and decrease the quantity and velocity of stormwater run-off flowing into the stream. All of these elements would, in the opinion of the two environmental experts who testified at the hearing, create at least the potential for the health of the stream to improve.²⁰

The subject site currently contains 114 trees that are considered “significant” or “specimen” trees (designations pertaining to the diameter of their trunks), and only eight are in poor condition. As may be seen on the NRI/FSD reproduced on the next page, many of the trees are located near the stream, but a significant number are located among the residential buildings, particularly in the western half of the site. Community member Max Bronstein expressed dismay that almost all of the existing trees – 91, to be exact – are planned to be cut down for the proposed development. The only trees that would escape the axe are the few located within the designated environmental buffer. Unfortunately for the rest of the trees, they were planted or have grown in somewhat random groups and rows, which are inconsistent with the linear street-tree patterns the Applicant proposes for this high-density project.

The County’s forest conservation law requires developers to replace forest that is removed for development. In the present case, most of the existing trees that qualify as “forest” would be preserved. However, the Applicant would be required to replace the small amount of forest being removed, plus forest that was cleared some years ago from the northeast corner of the site on Blocks G and H. The reforestation requirement for these applications (calculated jointly for both stages of the

development) is 8.3 acres. See Preliminary Forest Conservation Plan cover sheet, Ex. 102(a). The County's regulations permit up to 20 percent of a reforestation requirement to be provided in the form of street trees – individual trees planted along streets, typically between the curb and the sidewalk. The Applicant here proposes to plant approximately 514 street trees, the first 147 of which represent 20 percent of the required 8.3 acres. The preliminary forest conservation plan, which Environmental Planning Staff has found acceptable, provides for 1.7 acres of actual reforestation on site, in the form of 170 trees and 56 shrubs to be planted in the environmental buffer. See *id.*; Ex. 98.

Natural Resources Inventory/Forest Stand Delineation, Ex. _19



²⁰ One expert opined that the stream would definitely benefit and another that it would potentially benefit.

For reasons that are not explained in this record, Environmental Planning Staff and the Planning Board consider it acceptable for the remaining 4.9 acres of reforestation to take place off site, at another location. This may be because the Planning Board and its Staff consider the construction of a high-density, mixed use development at this site more important than creating additional forested area at this location. Moreover, Environmental Staff expects the loss of trees to be mitigated by the use of “best management practices” such as green roofs, selective use of porous paving, bioswales and rain gardens for run-off control, extensive planting of native trees to create canopy cover, and capturing non-potable water for use in irrigation and a civic fountain. See Environmental Planning Staff Memorandum, Ex. 76.²¹

Environmental Planning Staff observed that pervious space is critical to environmental quality and livability in dense urban spaces, as it provides opportunity for groundwater infiltration, tree planting and recreational activity. Environmental Planning Staff suggested that the layout of the buildings, roads and open space on the Development Plan “can be changed to increase environmental benefits by providing more pervious areas. These refinements to the plan should occur during the Preliminary Plan approval process.” Ex. 76.

Mr. Bronstein believes that vigorous efforts should be made to accomplish the required eight acres of afforestation on site, and that a way must be found to preserve the great trees on this site when it is redeveloped. He submitted a series of photographs of trees on the site, although he was unable to provide identifying information for most of them. See Exs. 130-131. The photographs confirm that the subject site has a substantial number of large, tall trees.

Having been developed in the 1960s, the subject site currently has no stormwater management quality or quantity control facilities. Stormwater run-off flows directly into storm drains, untreated, and with its natural volume and velocity unchecked. This, the testimony indicates, has contributed to poor water quality in the stream fragment that goes through the site, as well as erosion of its banks.

²¹ This memorandum was not attached to the Staff Report because it was prepared later, between the date the Staff Report was issued and the date the case went before the Planning Board.

Expert testimony presented at the hearing described the Applicant's intention to use innovative and sustainable stormwater management practices on this site that will mesh with the stream valley corridor. The concept stormwater management plan incorporates features such as vegetative filtering of stormwater run-off, and managing the runoff to avoid large concentrations of flow in short periods of time. See Tr. June 29 at 31-32, 39-40. It also incorporates opportunities to provide micro-habitats and corridors as refuges, in this urban setting, for small mammals, birds and insects, and to provide passive and active recreational opportunities, as well as educational opportunities, for residents and visitors. These opportunities include planting in depressed areas, using permeable paving and porous pavement, and providing water features that have both an aesthetic component and a stormwater management function. See *id.* Green roofs may also be used, as well as "stormwater planters" along the streetscape areas, which both provide shade and filter water.

Most of the environmental features discussed in the testimony do not appear in detail on the Development Plan. The Development Plan does delineate, however, the environmental buffer, and a textual binding element states that no structures or impervious surfaces shall be located within the environmental buffer. In addition, the "Binding Design Principles" include several commitments that relate to stormwater management and other environmental features: all streets shall have a street tree zone separating the sidewalk from the curb, on both sides of the street; a major central public use space shall be located between Blocks B and D, to include a multi-use lawn area; a naturalized park edge shall be located adjacent to the delineated stream valley buffer; minor open spaces will be distributed through the project and will be diverse in terms of size, function and type; and, "to the extent practical," open space areas shall incorporate on-grade rain water bio-filtration strategies. See Ex. 144(a).

H. Community Participation

These cases were the beneficiary of considerable community participation, some in support, some in opposition and some in qualified support. Some community members who

otherwise might have testified in opposition offered qualified support for the project after the Applicant agreed to the height limits shown on the Development Plan. In total, eight community members testified at the hearing, five clearly in opposition and the rest voicing qualified support. Ten letters were received from individuals who did not testify at the hearing, five in support or qualified support and five raising concerns or voicing opposition.

Four of the witnesses testifying from the community are associated with citizens' groups: Ann Ambler from Layhill South, who offered qualified support and did not state whether she was speaking officially for her organization; Vicki Vergagni, who expressed qualified support on the part of the Glen Way Gardens community; Max Bronstein, who expressed opposition on behalf of the Strathmore Bel-Pre Civic Association; and Michael McAteer, president of the Glenmont Civic Association, who expressed opposition on his own behalf. The Applicant points out that the Layhill Alliance, the umbrella association for the larger area of which Glenmont is a part, did not oppose the project (the record contains no communication from the Layhill Alliance), and 37 other civic groups that were notified about the applications likewise did not voice any opposition. See Ex. 142 at 2-3.

1. Community Support

The record contains three letters in support, two from transit-oriented community organizations and one from a local business owner.

The Action Committee for Transit writes to strongly endorse the proposed development as "an outstanding start to the long overdue transition creating a walkable downtown around the Glenmont Metro." Ex. 71. The Committee is concerned that the number of parking spaces the Zoning Ordinance requires is in excess of the number that are really needed so close to Metro. They propose that excess parking spaces be rented to Metro commuters, and suggest that the Planning Board put a condition on the zoning approvals that any condominium association must allow unit owners to rent out their parking spaces, and reserve some parking spaces for car sharing services like Flexcar or Zipcar. See *id.* While the Applicant expressed support for the idea of Flexcar or Zipcar spaces, these suggestions do not relate directly to the findings the District Council is required to make in a zoning case, and are better left for site plan review, if the project moves forward. Finally, the

Committee recommends that on-street parking be required along Glenallan Avenue, and that the SHA be “strongly encouraged” to allow parallel parking on Layhill Road. These issues also are at level of detail best left for site plan review.

The Smart Growth Alliance, a partnership of the Urban Land Institute of Washington, the Chesapeake Bay Foundation, the Greater Washington Board of Trade, the Coalition for Smarter Growth, the Metropolitan Washington Builders’ Council and Enterprise Community Partners, has recognized the proposed development as a Smart Growth Project Proposal. See Ex. 111. The Alliance describes its mission as to research, identify and encourage land use, development and transportation policies and practices that protect environmental assets and enhance our region’s quality of life. Its Recognition Program distinguishes development proposals “that exemplify smart growth characteristics.” *Id.* The “Recognition Jury” was pleased to see that this project would provide increased density where it is most appropriate, that the transit-oriented design would enhance the pedestrian environment for transit riders and members of the public, and that the mix of residential and retail uses would complement existing uses in the area. The jury also viewed favorably the proposed environmental features, such as green roofs, stream buffer restoration and a commitment to apply for LEED Neighborhood Design certification. See *id.*

The Georgia East Limited Partnership, which owns a portion of the Glenmont Shopping Center, wrote in support of the present applications. See Ex. 136. The writer, Leonard A. Greenberg, stated that he is very familiar with the JBG Companies, which has produced excellent and innovative plans for properties in close proximity to several Metro stations. Mr. Greenberg argues that the Sector Plan was created to build off of Metro and transform Glenmont, especially the Center, into a new community. He believes that the development proposed here follows the Sector Plan’s recommendations, and its approval would be consistent with the County’s longstanding emphasis on concentrating development around Metro stations. If development should not happen here, he asks, then where?

2. Testimony and Letters Offering Qualified Support or Raising Concerns.

Three witnesses and two letters fall into this category.

Sergio Santucci resides on Randolph Road in Silver Spring. His main concern is accessibility to the proposed project in and out of Georgia Avenue. He expressed concern that the extension of Denley Road through the property is not shown on the Development Plan. Mr. Gang explained that the new neighborhood main street would serve the same function but would not extend directly from Denley Road, because that would require putting the road through the most environmentally sensitive area of the site. Moreover, Mr. Gang added, the Sector Plan's urban design goals can be better met if the curb cut for the new street is farther south, helping to create blocks of a length that pedestrians find manageable. Also, Mr. Gang would not expect SGA to approve a curb cut directly across from Denley Street.

Mr. Santucci suggested that the proposed development should use extra parking spaces for public parking, since they shouldn't need the normal amount of parking so close to Metro. He also provided written comments stating that the ideal new development surrounding the Metro station should be well planned, high density residential development with enough commercial establishments to preclude the need for a personal car; "in essence, a mini city." *Id.* The unused parking spaces, Mr. Santucci suggests, could be rented to Metro commuters.

Mr. Santucci suggests building additional parking in nearby communities such as Olney, with express bus service. This would avoid additional traffic on already congested roads near the Glenmont Metro. Mr. Santucci believes that the proposed modification to Georgia Avenue and Randolph Road is a stopgap measure that will be overwhelmed in a few years. He suggests a limited access road on undeveloped land next to Hewitt Avenue, and returning Randolph Road to its former condition as a local road, rather than the "outer Beltway" it has become. Mr. Santucci does not support a new Metro parking garage in Glenmont, on valuable property that could be used for more well-planned development.

Ellis Moore is the pastor at the Georgia Avenue Baptist Church, which has been at its current location at the corner of Georgia Avenue and Glenallan Avenue, next door to the Metro station and across from the subject site, for 54 years. He noted that the Metro property once belonged to the church. The church has 900+ members, and approximately 60 percent of the congregation lives

within three to four miles of the church. Reverend Moore has been in the ministry 34 years and with this church for four years. He stated that the church's main concern is the sense of community in the area. He would not like to see the church towered over and the sense of community washed away by the new development. He particularly thinks that tall buildings along Glenallan Avenue could affect the sense of community by making it feel walled in. He also believes a certain amount of green space is needed, and acknowledges the plans show that. Reverend Moore suggested that Glenallan Avenue would not be a safe place to have gathering spots for people, because cars do run off the road. Reverend Moore's office overlooks Glenallan Avenue, and he frequently sees accidents when people underestimate the curve, particularly on icy winter days.

Reverend Moore also voiced a concern about safety. There are frequently people sleeping under the bushes around the church, and there are robberies, despite the church having added more lighting. A new development would bring more people to the area, which might or might not cause problems. It could increase the size of his congregation, which would be positive. Traffic is an additional issue. The church has chained off the Georgia Avenue entrance to its parking lot because it was not safe to use, plus people were using the church as a turnaround. Instead, the church uses an entrance on Glenallan Avenue.

Vicki Vergagni is the President of the Board of Directors and volunteer onsite property manager at Glen Way Gardens Condominium Association (the "Glen Way Condo Association"). She has lived in Glen Way Gardens for 32 years, and testified that she was authorized by her Board to speak on behalf of the association. Glen Way Gardens is located in the southeast corner of Layhill Road and Glenallan Avenue, diagonally across from the subject site.

Ms. Vergagni stated that the Glen Way Condo Association supports the proposed redevelopment of the subject site. The subject site is a prime piece of real estate right next to Metro, and the existing housing at Privacy World has aged and needs to be rehabilitated or replaced. The Glen Way Condo Association recognizes that change is inevitable, but hopes that it will integrate with and contribute to the existing neighborhood, rather than isolating itself and distracting from or competing with the existing neighborhood. To achieve this, Ms. Vergagni argues, the development

needs to be architecturally open and its retail space complementary to existing stores, to avoid the new residents staying in their compound and creating an “us v. them” feeling.

Ms. Vergagni described Glen Way Gardens with great affection, noting that it has 214 condominium garden apartments situated on 15 lush acres of greenery. There are 560 residents hailing from 42 countries of origin, many fairly recent immigrants. Approximately 34 percent of the residents live alone, 41 percent in households with two or more adults, and 25 percent in households with one or more adults and minor children. The residents have a variety of occupations, and Ms. Vergagni considers them fairly representative of the Glenmont community. She presented slides showing informal interaction among Glenmont residents, such as a yard sale and people at a local pub, and stressed, as did other witnesses, that this is a real *community*. Ms. Vergagni maintained that the density currently proposed is too high for Glenmont.²²

Ms. Vergagni asserts that based on United States census data, the estimated median home value in her zip code in 2005 was \$372,223, a value that many existing residents would find difficult to afford. This she compared to the approximate value the Applicant has suggested for homes in the new community, \$300,000 to \$600,000. [Mr. Roberts of JBG confirmed that this estimate is within the range.] Ms. Vergagni states that the average adjusted gross income per household (in her zip code, presumably) is \$49,182, and median household income is about \$64,000. She has consulted two realtors who estimate that a household at this income level, with no existing debt, could afford to purchase housing with a price range of \$220,000 to \$260,000. Thus, Ms. Vergagni concludes, the new development would be out of reach of most people in the neighborhood.

Turning to traffic, Ms. Vergagni presented data from the SHA website indicating that in the most recent seven years for which information was available, there have been 46 reported incidents of property damage or personal injury at the intersection of Glenallan Avenue and Layhill Road. See Tr. July 24 at 143. She also reported that since the hearings in this case began she has

²² Using census data for her zip code and a Montgomery County statistic of an average 2.6 people per household, Ms. Vergagni estimated that the proposed development would have a population density of 8,110 residents per square mile, compared to 4,389 per square mile in her zip code, and 84 percent greater than the average density for the County. See Tr. July 24 at 136-140; Ex. 134(a).

heard two more accidents at that intersection. She blames these, in part, on the topography, which makes the traffic on both roads “blind.” Ms. Vergagni stated that cars go too fast on Glenallan, hoping to get a green light at Layhill, and there are a lot of rear end accidents. She further stated that on the other side of Layhill, Glenallan nominally has four travel lanes, but two lanes are perpetually filled with parked cars – Metro riders during the day and area residents at night. In her experience, the parked cars do not slow down the traffic, as the Applicant’s experts suggested they would on the other part of Glenallan. Ms. Vergagni said that parked cars have been hit by cars coming up Glenallan Avenue going too fast. She believes that having parked cars, residential uses and a café along Glenallan Avenue is “an accident waiting to happen.” *Id.* at 148.

Ms. Vergagni stated that it is not uncommon for morning rush hour traffic on Georgia Avenue, waiting to turn left onto Glenallan Avenue, to be backed up far beyond the left turn storage lanes. Moreover, it is not unusual for through traffic on Georgia Avenue to be backed up [from the Randolph Road intersection] past the intersection with Layhill Road and even past the intersection with Glenallan Avenue. Ms. Vergagni stated that it may take three or four lights to turn left from Georgia Avenue to Layhill Road, and it is often impossible to turn from Layhill onto Georgia because traffic on Georgia is not moving, and there is no where to go. This level of congestion makes it very difficult to enter and exit Glen Waye Gardens during rush hour. See *id.* at 151.

Ms. Vergagni believes that the proposed development should include a public open space for community cultural events, such as a bandstand, as well as rooms for community events. She is also concerned that if there is not enough parking on site, the residents will look for parking in the neighborhood, of which there is already not enough. She therefore believes the number of parking spaces should be increased.

Ms. Vergagni noted that there is a drop of about 30 feet from Layhill Road to the Winexburg community, so all you really see driving down Layhill is the roofs. Ms. Vergagni stressed that the community wants townhouses at the corner of Glenallan Avenue and Layhill Road because they are lower, and the taller buildings should be in the back part of the site where the topography slopes down. She also recommended that the retail component of the proposed development be

hidden behind a row of townhouses, rather than being visible from the road, for compatibility with the surrounding residential neighborhood.

Ms. Vergagni also addressed the need for affordable housing in Glenmont. She noted that the current development on the subject site, Privacy World, has 352 units of affordable housing. She does not know whether these units are formally registered with the County as MPDUs, but she believes they meet the affordability guidelines. The new development would have only 225 MPDUs, a loss of 127 affordable living units. The rest of the units would be priced at a level that most Glenmont residents could not afford. Ms. Vergagni believes that the proposed development should include, in addition to the required MPDUs, five percent workforce housing. [Note: the present applications were filed just before the effective date of the County's recent workforce housing law, and therefore are not required to include workforce housing.] She also believes the development should have five percent "supportive housing," which provides housing and social services for homeless and disabled people trying to transition to independent living. Ms. Vergagni explained that there are a lot of homeless people in Glenmont who end up using the lobbies of residential buildings as their bedrooms and bathrooms, at great inconvenience to the residents. She considers the proposed redevelopment of the subject site an opportunity to help resolve some of Glenmont's problems.

Ann Ambler. Ms. Ambler resides on Kuhl Road in Silver Spring. Ms. Ambler attended much of the hearing, but was not able to stay to give her testimony in person. She therefore submitted her remarks in writing. See Ex. 132. Ms. Ambler supports the proposed rezonings and believes both should be approved together, but only with the following binding elements, none of which has actually been proposed by the Applicant:

1. Stage 2 will not proceed unless a dedicated express busway from Olney to the Glenmont Metro station is in place, with a substantial contribution to its cost from the Applicant, instead of contributing to a grade-separated interchange or widening Georgia Avenue.

2. Parking spaces will be rented or sold separately from housing units.

3. Commercial development will proceed in tandem with housing. Stage 1, covering nearly 24 acres (77 percent of the total area) and half the final count of units, will have at least half of

the 90,000 square feet of retail space, including a grocery store. [Note: The Sector Plan's staging recommendations permit up to 200 jobs in Stage 1. With a rule of thumb of 400 square feet per retail employee (see Tr. July 16 at 174-75), 200 jobs represents roughly 80,000 square feet of retail, 20 times what the Applicant proposes for Stage 1.]

4. The heat-island and stormwater effects of the significant loss of mature trees will be mitigated by extensive on-site planting of native trees, green roofs on all multi-family buildings, bioswales, rain gardens, and porous pavement in addition to everything required under the Forest Conservation and sedimentation laws. A substantial amount of rainwater will be captured for irrigation and other appropriate reuse.

5. The Applicant will build to the LEED Silver for Neighborhoods standard. [Note: There is no information in the record describing what the LEED "Silver for Neighborhoods" standard is, but Ms. Ambler indicates that the County requires compliance with the lowest LEED standard, and even that requirement applies only to buildings above five stories, which would not cover many of the buildings proposed here. See *id.* at 5.]

6. The proposed development will have an area that can serve as a "market square" where local farmers can sell produce in season.

Ms. Ambler may have been unaware that nothing can be added to the Development Plan after the record has closed, and that textual binding elements can only be offered by the Applicant, not imposed by the Council.

Ms. Ambler explains that her basic approval of the project and her conditions spring from "concern for the short and long-term health of our county's citizens and concern for humanity's survival on this planet." Ex. 132 at 1. She describes the global warming crisis currently facing humanity, noting that Montgomery County and Governor O'Malley have called for greenhouse gas emissions to be cut by 80 percent by 2050. She notes that the Washington Council of Governments ("COG") has found that even with increased vehicle energy efficiency on the scale recently approved by the State legislature in the Clean Cars Act, the State will still have a 22 percent increase in emissions between 2002 and 2030. COG recommends that we reduce the number of vehicle miles

we travel. On this basis, Ms. Ambler “cannot call a development that is adjacent to transit *smart growth* if it fails to minimize growth in car travel – if, in fact, the result is more cars, more driving, more GHG (greenhouse gas) emissions.” *Id.* at 2.

Ms. Ambler states that the proposed development can be expected to bring in at least 1,923 additional cars (the number of residential parking spaces to be provided), less 352 (the current number of households). She blames this on the large number of parking spaces to be provided; the fact that aside from Metro, which only goes south from Glenmont, transit is slow because it can only move with the traffic and bus routes are not direct; the likelihood that many residents of the new development will drive because it will be difficult to cross the multi-lane arterials on foot; and her view that efforts to change the incentives to favor non-car mobility have been feeble. See *id.* at 2-3.

Ms. Ambler notes that while the intersection of Randolph Road and Georgia Avenue is heavily congested during rush hour, it moves rather freely at other times, “*indicating that it is commuter car trips that need to be reduced to avoid major congestion.*” *Id.* at 3. Ms. Ambler has lived in Glenmont for 37 years and has seen Randolph Road and Georgia Avenue widened several times, becoming ever more unpleasant, smelly and threatening to pedestrians. In her view, the proposed grade-separated interchange would signal to drivers that highway speeds are appropriate, and condemn pedestrians to crossing nine lanes of traffic on Georgia Avenue to go to the shopping area or the bus stop. Ms. Ambler views the alternative, at-grade improvements as also short-circuiting the goal of encouraging more pedestrian and bicycle movement and fewer cars. Her ultimate transit goal for the area would be a tram on a grassy strip in the median, as are built in many places in Europe. See *id.* at 4. She acknowledges, however, that “until public officials and the public truly understand the climate threat and the beautiful possibilities trams offer, the best we can probably do is a busway.” *Id.*

Ms. Ambler believes that building new housing without substantial retail on site would destroy a large part of the idea of a walkable community, which is to handle everyday needs on foot. She notes that many of the environmental elements she considers crucial have been discussed as

part of the Applicant's plans. She stresses that these features must not be allowed to slip through the cracks, which is why she believes they should be in a binding element.

Susan Julien is a Glenmont resident who thinks that in principle, the proposed development "sounds like a lovely idea and a nice facelift for the Glenmont community." Ex. 80. She is concerned, however, about where the children living there would attend school. Also, she finds that Glenmont is in desperate need of amenities and conveniences, but fears that the proposed development will bring in "just another endless set of chain restaurants and stores" that she can find at the regional shopping malls. She also wonders what the County will do to make the Glenmont Shopping Center look "less derelict" after this development is built.

Ms. Julien is concerned that the MPDUs promised as part of this development will not actually get built, like so many promises developers have made in the past. She also suggests that the redevelopment proposed for this property may be one reason Metro decided to build a second parking garage on the west side of Georgia Avenue, instead of expanding the garage on its current site. Ms. Julien believes that Metro should use the same ingenuity it has shown at other sites to expand the garage in the current location.

Witnesses and Letter in Opposition.

Five witnesses and four letters fall into this category.

Susan Lois Johnson resides on Teaberry Road in Glenmont, very close to the subject property. Since 1987 she has lived in Layhill South, an area of close to 300 single-family homes bordered by Middlevale Lane and Kennedy High School on the east and Layhill Road on the west, with Briggs Chaney Road dividing the community and connecting it to Randolph Road. Ms. Johnson has worked actively on community issues for most of her 20 years in the community.

Ms. Johnson voiced two primary concerns: traffic mitigation, and community culture and lifestyle. She noted that the intersection of Georgia Avenue and Randolph Road is failing, and opined that the grade-separated intersection at Georgia Avenue and Randolph Road is necessary to make Stage 2 of this development work. Ms. Johnson described Glenallan Avenue as a major cut-

through route for people going east on Randolph Road. In her view, two new lanes on Georgia Avenue would not do much to solve the traffic problem.

Ms. Johnson would like to see consideration given to a pedestrian overpass across Georgia Avenue to the shopping center area, after the grade separation is in place. She feels that this would help the community pull together.

Ms. Johnson described Glenmont as a largely residential area with government and other workers, tradespeople and people from many different cultures. She is concerned about the building heights and setbacks and believes any parking along Glenallan Avenue should not come from the public street. She is concerned about the scale and feel matching the surrounding areas. Ms. Johnson would like to see more workforce-level affordable units than the County requires, and does not want to see any buyouts of MPDUs. Ms. Johnson finds it hard to imagine a dwelling unit density of 50 units per acre, and believes that should be reduced to preserve quality of life for residents of the new community and the surrounding area.

Finally, Ms. Johnson strongly recommends that if this rezoning proceeds, the O-M parcel should be included as part of the overall zoning, as it would contribute to the overall appearance and scope of the development.

Ms. Johnson submitted the bulk of her comments in writing as well. See Ex. 97.

Brian King spoke on behalf of his father, who runs the gas station at the corner of Georgia Avenue and Randolph Road, which would be razed for the grade-separated interchange. Mr. King described the 50-year-old station as a big piece of the community that makes Glenmont recognizable. His father has worked at the station for 30 years and owned it for 12. They have about 10 employees, seven of whom are heads of households. Many of their customers have been bringing their cars to this station for service for many years, and would be very disappointed to see it disappear for the grade-separated interchange. They do about 50 repairs a week, plus they have a convenience store, gas, car wash, vacuums, propane – lots of services for community. He maintains that it would be unfair for the station to be torn down with no compensation for the employees or for his father, who leases the station. Only the property owner would be compensated.

Mr. King believes that people will not be able to get around Glenmont very well if the interchange is built. It will be hard, if not impossible, to cross the intersection, and if the development proposed here is built, that will create even more traffic. He also believes building additional homes will not help the environment, as it will cause more air pollution. Mr. King said the roads are congested all around the area. He believes that building the interchange and the proposed development would make the area very hectic.

Max Bronstein is a member of the Board of the Strathmore Bel-Pre Civic Association (the "Strathmore Civic Association") and his remarks were approved by the Board. The views expressed here are summarized in the third person as Mr. Bronstein's statements, but he spoke on behalf of his community of 800 homes, located between Bel Pre Road, Layhill Road and Georgia Avenue. Mr. Bronstein stated that his community is quite concerned about increased congestion on Layhill Road, Georgia Avenue or Randolph Road, all of which are entry points to their community.

Mr. Bronstein began with remarks about "the present environment in the County regarding growth and development." Tr. July 24 at 163. He noted that the winner of the recent County Executive election and a number of successful candidates for County Council campaigned on slower growth platforms. He stated that many citizens and practically all of the civic activists find the Planning Board and its staff too development-friendly. It is very difficult for the average citizen to participate effectively in the various land use proceedings, particularly before the Planning Board. Mr. Bronstein stated that many citizens don't want to bother because they believe the developers always get their way, and many feel intimidated by the process and overwhelmed by the developers' resources.

Mr. Bronstein expressed concern about over-emphasis on the language of master and sector plans. He urges recognition that, as stated in the "Note to Reader" at the start of every master plan, "circumstances will change following adoption of a plan and that the specifics of a master plan may become less relevant over time." Tr. July 24 at 165. Mr. Bronstein finds it very troubling when the Planning Board and its Staff suggest that if a proposal complies with the master plan that is enough for approval. He believes there should still be in-depth analysis of a proposed plan from the

point of view of the public interest. In his view, the staff reports too often appear “to be a search to find justification for approving applications,” without sufficient “balance [so] as to determine that the public interest is served and protected.” Id. at 166.

Mr. Bronstein then addressed several flaws he perceives in the Applicant's case. First, he reported data from the Washington Post about air pollution in Montgomery County and the Washington, D.C. area in general, part of which is from carbon dioxide in vehicle emissions. Mr. Bronstein pointed out that according to a memorandum from Environmental Staff Member Marion Clark at MNCPPC, Exhibit 76, the Applicant will institute measures to offset ground level ozone and the urban heat island effect that would be caused by more cars and less trees. He states that when he asked Ms. Clark about her involvement in the air quality and pollution aspects of this case, she “appeared surprised and flustered and replied we don’t get into that.” Tr. July 24 at 168. Mr. Bronstein argues that the subject of air pollution should be addressed and satisfactorily reported upon in advance of any rezoning decision.

This raises a troubling issue, but one whose legal ramifications are not clear. One cannot deny that vehicle emissions play a significant role in air pollution. In theory, Montgomery County could require each developer to demonstrate that the environmental impacts of increased emissions caused by a project would be offset by environmental protection measures such as innovative stormwater management, green roofs and green buildings. Absent a statutory or regulatory mandate to do so, however, it strikes the Hearing Examiner as unfair to deny or defer these proposed rezonings for failure to address an issue that is not typically part of a zoning case and was not raised by Technical Staff or the Planning Board.

Mr. Bronstein notes that there are 114 significant and specimen trees on the site, 91 of which would be cut down for the proposed development, and that much of the afforestation required to make up for current and past removal of forested areas on the site is planned to take place off-site. Mr. Bronstein believes that vigorous efforts should be made to accomplish the necessary 8 acres of afforestation on site, and that a way must be found to preserve the great trees on this site when it is redeveloped.

While it is regrettable for mature trees to be cut down, the expert testimony indicates the potential for greater benefit from reforestation of the environmental buffer, where trees are more environmentally valuable than in small groups elsewhere on the site. The Preliminary Forest Conservation Plan calls for preserving most of the existing trees that qualify as “forest” and planting a total of 684 trees in the environmental buffer and along the sidewalks. If the project goes forward, it will be up to Technical Staff and the Planning Board to decide whether some of the new trees should be planted at a larger size than typical saplings, to more quickly replace the mature trees. It is also possible that revisions during site plan review may result in preserving a few more trees just outside the defined environmental buffer.

Mr. Bronstein compared the proposed development with the Winexburg apartment complex across Layhill Road. The Winexburg community has 625 units on 33 acres of land, with a broad band of green lawn, trees and bushes bordering the community and many trees and bushes throughout. The buildings are all three stories except for one, which has eight stories and a partial lower level. The tall building is “almost invisible” from the street because it is located in a valley and obscured by trees. *Id.* at 170. Mr. Bronstein describes the development proposed here as “straight high walls on its perimeters, trees being removed rather than preserved, forestation done elsewhere rather than onsite and a desire for a Manhattan type density rather than for density that is reasonable for the area and the circumstances.” *Tr.* July 24 at 170. He points out that the area around the site is a suburban community of one and two-story single-family homes, two-story townhouses and several communities of three-story multi-family residences, not an urban central business district. In Mr. Bronstein’s view, the presence of a Metro station “does not automatically change a surrounding neighborhood in[to] a tall building area, nor does [it] make unlikes alike.” *Id.* at 171. This argument goes to the heart of the Sector Plan’s recommendations for the site, with which Mr. Bronstein strongly disagrees.

Mr. Bronstein notes that the Applicant’s evidence did not address the expected impact of the Inter-County Connector (“ICC”) on Georgia Avenue and its intersections with Glenallan Avenue and Randolph Road. Mr. Bronstein is informed by the SHA that construction on that leg of the ICC is

due to start in the Fall of 2007, with completion some time in 2010. See email from SHA official attached to Ex. 75. Mr. Bronstein feels strongly that the Applicant should be required to include that traffic in its traffic counts.

The "Staff Response to Planning Board questions raised at the 9/7/06 Indian Spring hearing," which is included in Exhibit 123 of this record, addressed ICC impact on Georgia Avenue and Randolph Road. In that document, Technical Staff cites projections in the Final Environmental Impact Statement ("FEIS") for the ICC projects that in the year 2030, the ICC will increase north-south average daily traffic at the Georgia Avenue/Randolph Road intersection by 8,300 northbound trips and 3,800 southbound trips. See Ex. 123, Staff Response at 1167. Compared to projected traffic volumes in 2030 without the ICC, this represents roughly a 17 percent increase northbound and about a seven percent increase southbound. The FEIS projects that the ICC will decrease east-west average daily traffic at the Georgia Avenue/Randolph Road intersection by about ten percent in each direction. The Staff Response goes on to state that the combined impact of the ICC and the proposed grade-separated interchange would be to reduce forecasted CLV at Georgia Avenue and Randolph Road below the current level and below the congestion standard. On this basis, Staff concluded that its decision not to include the ICC in the LATR analysis for the Indian Spring subdivision was the correct one. The Hearing Examiner considers it likely that if asked to address the same issue in the context of the present cases, Technical Staff would offer a similar response.

Mr. Bronstein was "amazed and surprised" that the Applicant's traffic study considered some trips locally-based, such as trips to the Plaza del Mercado shopping center and the Mid-County Community Recreation Center, and did not carry them south of Glenallan Avenue. He also believes that the Applicant missed a large expansion taking place at the Aspen Hill Shopping Center. Mr. Bronstein contends that the Plaza del Mercado has unique stores, restaurants and services, and draws clientele from many areas, not just the immediate vicinity. Similarly, the Mid-County Recreation Center serves the entire mid-County region, not just the local area. Mr. Bronstein considers the omission of these streams of traffic from the Georgia Avenue/Randolph Road intersection to be an egregious error, and perhaps an effort to affect the traffic count.

In its written rebuttal, the Applicant states that the traffic study for the expansion of Plaza del Mercado did not study Layhill Road intersections south of Middlevale, evidently because the traffic impact decreases with increasing distance from the Plaza del Mercado. Middlevale Lane is located significantly north of the subject site, and even at that location, the Plaza del Mercado traffic study anticipated only three trips “in either direction” on Layhill Road during the morning peak hour, and 14 trips during the afternoon peak hour.²³ See Ex. 142 at 66.

Similarly, the Applicant’s rebuttal states that the traffic study for the Mid-County Recreation Center also did not analyze intersections south of Middlevale Lane. It was estimated to generate only one trip “in either direction on Layhill Road” during the morning peak hour and six trips “in either direction on Layhill Road” during the afternoon peak hour at Middlevale Lane. Mr. Hedberg asserts, in the rebuttal, that even if the Plaza del Mercado and Recreation Center trips were carried south of Glenallan Avenue, disregarding the natural dissipation of trips, the traffic impact would be minimal. See *id.*

Mr. Bronstein takes little assurance from Technical Staff’s approval of the traffic study. He notes that the traffic study also failed to take into account a coming expansion to the Aspen Hill Shopping Center and 37 new homes being built at Layhill Road and Bel Pre Road. Mr. Bronstein asks that the present rezoning applications not even be considered until these errors in the traffic study are rectified. See Tr. July 24 at 174.

Mr. Bronstein also attacked the adequacy of the LATR test. He noted that CLV measures only how much traffic can get through an intersection, failing to take account whether the number of cars getting through is depressed by the very congestion it is intended to measure. See *id.* at 178-79. Mr. Bronstein noted that the Applicant’s traffic expert estimated that only 15 percent of the new residents would use public transit. That leaves 85 percent adding new vehicles to the roads. [Note: The 15% figure refers to the amount by which Technical Staff permitted the Applicant to reduce

²³ It is not clear what “in either direction” on Layhill Road means – a total of three tips on Layhill Road, or three northbound trips plus three southbound?

its expected trip generation to account for proximity to Metro. The Applicant's traffic expert testified that this was a conservative estimate, and he expects actual Metro usage to be higher.]

Turning to the proposed mitigation of congestion at Randolph Road and Georgia Avenue, Mr. Bronstein voiced his support for the proposed grade-separated interchange. He fears that if funds are wasted on at-grade improvements, there will be much less impetus for building the grade separation. He submitted an October, 2006 letter from an SHA official stating that the SHA anticipates that either the grade separation will be built, or failing that, the at-grade improvements will be built. See SHA letter dated October 20, 2006, attached to Ex. 75. The agency does not anticipate that at-grade improvements will be built first, and later the grade-separated interchange. See *id.*

Mr. Bronstein noted that the second Metro garage and a new fire house are both planned to be erected across from the subject site. The fire house is expected to open in 2012. Between that and the Metro garage, the Glenmont Center will be a destination for 3,000 cars parking in two garages, plus on average 3,492 emergency and/or fire calls per year. These uses will only add to the congestion. In his view, nothing should be built on the subject site until the grade-separated interchange is in place.

Mr. Bronstein is concerned about the density proposed at the subject site, in part because many existing multi-family developments in the area have insufficient parking, resulting in heavy on-street parking. In addition, the TS-R Zone permits two guest rooms to be rented in each dwelling unit, increasing the potential population level and therefore the parking need. [Note: The risk of room rentals is reduced by the anticipated size of the units, most of which would have only one or two bedrooms.]

Mr. Bronstein argued that the impact on school crowding is another reason these applications should not be approved. He noted that there is nothing in the budget today that says overcrowding at the elementary level will be relieved, despite Mr. Crispell's letter stating that he expects it will be in the budget soon. *Id.* at 177.

Mr. Bronstein described the Glenmont Shopping Center as having the flavor of Glenmont. Varied, not super fancy, but it works for most of the neighborhood. It has a Motor Vehicle

Administration facility, a United States Customs and Immigration Services office and 31 retail businesses, including a CVS and a Staples. Nearby are a 60,000-square-foot Shopper's Food Warehouse and Country Boy, practically an area institution, as well as two banks, a pub and two fast food restaurants. All of this would present some formidable competition for new retail at the subject site, in Mr. Bronstein's view.

Mr. Bronstein argues that the District Council has the discretion to recognize the flaws in this application, to recognize that the specifics of a sector plan become less relevant over time, and to deny these applications. He notes that the Sector Plan calls for a density "up to" a certain number of units – that does not mean the maximum needs to be accomplished. In Mr. Bronstein's view, the plan should be revisited to reduce the density to 950 to 1,000 units, including MPDUs, create a more community-friendly layout and a community more compatible with its surroundings, retain current trees and require all afforestation on site.

On cross-examination by Applicant's counsel, Mr. Bronstein stated that he had emailed the text of his testimony to the other members of his organization's Board, who made some comments and unanimously told him to go ahead. When asked which of the many issues he raised was most important, Mr. Bronstein said that would be difficult to assess, but he would probably say density and traffic. He conceded that it's more likely than not that the grade-separated interchange at Georgia Avenue and Randolph Road will be built in the foreseeable future.

Mr. Bronstein acknowledged that his recommendations regarding the subject site are contrary to the Sector Plan, but maintained that since the Sector Plan was adopted there have been a lot of new federal jobs created due to world events, significant traffic increases and global warming, so he believes the Sector Plan is less relevant. He acknowledged that he does not always agree with the County's Smart Growth policy, because he believes high density development is more appropriate near a Metro station in a central business district than in a suburban neighborhood. Mr. Bronstein takes little comfort from the binding elements related to height because they do not specify how many of the buildings would be seven stories and how many would be three or four – they only set a maximum.

Michael McAteer is Vice President of the Glenmont Civic Association and served on the Glenmont Sector Plan Committee between 1994 and 1997. He first addressed the issue of the existing fire station in Glenmont, which was described in a letter from another community member as a structure of historic significance because of the person who designed it. Mr. McAteer stated that his community believes the new Metro garage should not be built across Georgia Avenue from the subject site, as planned, but should be in Olney, with shuttle buses to the Metro station, because that's where people are coming from. Mr. McAteer indicated that his community has met with the Planning Board Chair about this issue, and that the County Executive has asked that an Olney location be considered for the garage instead of Glenmont.

Mr. McAteer's organization represents the area between Randolph Road and Denley Road on the west side of Georgia Avenue, which is developed entirely with World War II-era, single-family detached houses. Most of the houses have one or two floors, sometimes two and a half. Mr. McAteer noted that his civic association, which has over 160 people on its email list, was instrumental in persuading Metro to build a second entrance to the station on the west side of Georgia Avenue.

Mr. McAteer described Glenmont as small, only 568 acres within the Sector Plan area. The estimated population in 1997 was 60,000, and he believes it has increased substantially since then. He acknowledged that change will occur on the subject site and throughout Glenmont, but his association does not support the project as described by the Applicant. WMATA figures show that Glenmont Metro has over 12,000 riders per day, counting entries and exits, making it one of the largest stations in the County, and increasing every year. This demonstrates, Mr. McAteer asserts, that Glenmont is not the "unchanged and unchanging place" described by Mr. Gang. The community survived the building of Metro and now supports a major Metro station.

Mr. McAteer raised three major concerns about the proposed development. The first is traffic congestion. The Applicant estimates the development would cause at least 2,345 more cars to use Glenmont's roads, with about 85 percent of the residents driving to work during the week. [Note: this assertion is based on the 2,345 parking spaces proposed for the subject site, made up of 1,803 residential spaces and 542 retail/commercial spaces.] On weekends, Mr. McAteer expects the

number of cars driven to increase because almost everyone drives in Glenmont – it isn't safe to walk across the big arterial roads. See Tr. July 24 at 218. The second concern is that the new residents would likely draw very high incomes, by Glenmont standards, which would be a source of resentment. Mr. McAteer has heard this concern voiced by long-time Glenmont residents and business owners. The third concern is that the new development would physically dominate the community along Georgia Avenue, Glenallan Avenue and Layhill Road.

Putting some numbers to the traffic concern, Mr. McAteer noted that the SHA's 2007 estimate of the number of cars driving through the intersection of Georgia Avenue and Randolph Road is 85,500 per day. This number has grown by 1.5 percent every year in recent years. WMATA estimates 1,600 daily car trips to the Glenmont Metro Kiss and Ride. The existing and planned Metro garages would have a total of 5,200 parking spaces. See Tr. July 24 at 220. [Note: this number contrasts with other evidence suggesting the total is about 3,000 spaces]. The Glenmont Shopping Center and other surface lots in the vicinity have about 92,000 parking spaces. There are also 12 bus lines serving the Glenmont Metro Station. All of this, Mr. McAteer pointed out, takes place along three blocks of Georgia Avenue between Randolph Road and Glenallan Avenue, so it is a very busy spot.

Mr. McAteer estimates that the new development would produce about 3,000 cars, not the 2,345 the Applicant estimates based on its parking projection. See *id.* at 220. (He did not explain the source of his estimate.) In a written statement, he suggested that the County should take steps to reduce the number of cars now driving through Glenmont by the same number or more, before any new development is approved. See Ex. 73 at 2. Without such steps, he contends that bringing higher density to Metro would be counter-productive. Mr. McAteer offered the following as examples:

- Build the approved Georgia Avenue Busway, operating between Olney and the Glenmont Metro station, which he estimates would reduce car trips to Glenmont by 1,500 trips per day.
- Build and operate a light rail line along Randolph Road to connect to the Glenmont Metro station, increasing Metro ridership and reducing car trips.

- Operate an express bus line along Randolph Road to and from the Glenmont Metro station, which could be done quickly
- Build safe pedestrian access to the Glenmont Metro station from the larger Glenmont community.
- Provide better access to the Glenmont Metro station through feeder buses, shuttles and bicycle routes.

Mr. McAteer pointed out that the Sector Plan said Glenmont was to be a transit-oriented community, which it has certainly become. The premise of the whole plan was for people to be able to walk from their neighborhoods to the Metro and shopping, then walk home again. This has not happened, because the roads still are not safe to walk. Mr. McAteer stated that the vast majority of Glenmont residents drive, even to go two blocks to the grocery store, because that is the only safe way to cross the major roads. He asserted that walking to Metro is especially dangerous on the east side of Georgia Avenue, where the subject site is located, because Layhill Road, Glenallan Road and Randolph Road are wide, dangerous barriers for pedestrians. Mr. McAteer expects that if the proposed development is built, its residents will find it unsafe to walk across Glenallan Avenue to get to the Metro station. See *id.* at 222. He recommends linking the subject site to the Metro via a tunnel, to be gated at night when traffic lessens. Without a safe means for pedestrian crossings, he believes the proposed plan will not work. He is also concerned that the proposed development may not draw people willing to pay the high prices anticipated, and worries about the impact on Glenmont if this “pie in the sky” development fails.

Mr. McAteer stated that based on Montgomery County Police records, there were five fatal pedestrian/automobile collisions in the area matching the Glenmont Sector Plan boundaries in 2005. In 2006 there were two, and in the first six months of 2007 there were two. See *id.* at 225.

Mr. McAteer described the features of Glenmont: a shopping center; the Metro station; a large shopping area just outside Glenmont, three blocks to the south; five or six churches; a Department of Motor Vehicles office; at least nine eating establishments; two public high schools; many single-family homes; a modest amount of rental housing and one condominium complex. The

rental and condominium properties are Privacy World with 352 units on 30 acres, Winexburg with 625 units on 33 acres, Glenmont Forest with 482 units on 33 acres and Glen Waye Condominiums with 214 units on ten acres. All of these, Mr. McAteer points out, are much smaller than the number of units the Applicant proposes.

Mr. McAteer then described the culture of Glenmont. See Tr. July 24 at 228. It was settled by World War II veterans who moved into new Cape Cod homes. Since that time, many families of moderate means have found in Glenmont affordable housing, a safe neighborhood and good schools. Mr. McAteer that Glenmont is a place “where neighbors become friends and where people who have moved away come back to visit.” Mr. McAteer is apprehensive that if the subject site is developed in a way that does not complement the neighborhood, it could degrade the community. Mr. McAteer has reviewed the submitted plans, and hasn’t “seen any good connection between the proposed development and the established community.” *Id.* at 229.

Mr. McAteer also has a concern about affordable housing and what will happen to the current residents of Privacy World, who may be unable to find comparable housing in Montgomery County. One renter there told him his two-bedroom apartment costs \$1,200 per month, which Mr. McAteer described as a below-market rate, and considerably below the anticipated rents at the proposed Glenmont Metrocenter.

Another issue that concerns Mr. McAteer is that the bulk of the new buildings would diminish everything around them. He cites the Sector Plan at page 38, which states that high rise buildings may be acceptable if they are “at the rear of the site towards the rail yards and do not shade existing housing.” He also cites a conceptual drawing on page 31 of the Sector Plan, which shows taller buildings at the rear of the property. Mr. McAteer believes that high buildings along Georgia Avenue would be out of proportion with the churches, the apartment and condominium complexes, the shopping center, the fire and police buildings and a multitude of single-family homes. Mr. McAteer confirmed the testimony of others that the one tall building at the Winexburg complex is largely below grade, and stated that the four-story buildings in the Glenmont Forest Apartments, south of Randolph Road, are far from the street, behind a dense screen of old growth trees and shrubs.

Mr. McAteer noted that MNCPPC is about to begin a major study of the Georgia Avenue corridor from Silver Spring to Olney, with the goal of fixing it so it is not choked with cars. He contends that this development should not be approved until the study is completed, because its findings may have a major impact on the kind of development permitted along Georgia Avenue. The Hearing Examiner finds that while the County could choose to stop development along Georgia Avenue while the study Mr. McAteer describes is completed, fairness would call for doing so in a comprehensive way applicable to all proposed development, not just in two individual zoning cases.

Mr. McAteer suggested some alternative uses for the subject site: an office building, where many workers could arrive by bus or Metro, and cars driven there would stay on site and not be driven around the neighborhood; an institutional use; or an upgraded garden apartment complex. The Council's role in a rezoning case, however, is to evaluate the proposal submitted, not to suggest an entirely different use.

Mr. McAteer made some observations about the Sector Plan, having served on the Citizens Advisory Committee during its preparation. He stated that the drafters tried to give some guidance on what Glenmont should look like in 20 years, but there were things about the future they could not see. They did not realize that high density on the subject site would have a negative impact on arterial roads, because they assumed that people who moved to a Metro station would use Metro. Now, the Applicant estimates that only 15 percent of the residents would use Metro. The people who worked on the Sector Plan never thought the County would propose to move the Glenmont fire station to the open space near the west side Metro entrance, or to build a new Metro garage in that same open space. Neither of those plans was even discussed in the Sector Plan, suggesting that it isn't always followed.

Mr. McAteer conceded that he was in favor of higher density near Metro during the preparation of the Sector Plan. He was stationed in Paris many years ago in the Army, and thought it would be like that – very urban, everyone riding Metro. He did not realize a new development on the subject site would also have 3,000 parking spaces. The interchange, however, was different. Mr. McAteer still remembers the day he went to a meeting and there was the idea for the interchange, all

drawn up by someone high up at MNCPPC. He believed that if they wanted Glenmont to succeed they had to make it walkable, and that would require making the roads narrower. He looks at 12,000 riders a day, buses and all that activity and says it's trying to be a city, but the road people keep coming in and paving everything. In the end, the MNCPPC members of the Sector Plan Committee said the community members' input is advisory, but MNCPPC gets to write it. Mr. McAteer wrote a dissenting opinion with regard to the interchange and a few other things. See *id.* at 235-36.

Mr. McAteer's association has gathered 900 signatures on a petition opposing an interchange at Georgia Avenue and Randolph Road. See Tr. July 24 at 215; copy of petition submitted as Exhibit 72. Technical Staff has stated that the interchange would have a total of 18 lanes, nine on Georgia Avenue and nine on Randolph Road. It would pave over "the dominant visual corner of Glenmont, our main intersection, two businesses, our green space and our fire station," as well as bringing in more cars. *Id.* at 232.

In sum, Mr. McAteer believes the proposed development would have a negative impact on Glenmont and should be changed to better fit the existing community.

On cross-examination by Applicant's counsel, Mr. McAteer explained that the Glenmont Civic Association is a volunteer group and does not assess dues. See *id.* at 244. They used to, and have some money in the bank, but they don't spend it.

When asked what he likes about the proposed development, Mr. McAteer expressed some reluctance to speak freely because he was still negotiating an agreement with the Applicant at the time. (The negotiations were ultimately unsuccessful.) He did state that the retail has some potential, and that he believes it should be out front on Glenallan Avenue, to "activate" the street, as the planners said. He agrees that retail is one way to create a synergy between existing Glenmont and the new development, and added, to everyone's surprise, that "high end" retail would be appropriate.

Mr. McAteer reiterated that if this development goes forward the residents will find themselves isolated, unable to walk across Glenallan Avenue. He acknowledged that the Applicant is

aware of that issue and appears ready to try and create grade-level pedestrian connectivity. Mr. McAteer is skeptical of their success.

Mr. McAteer agreed that a lot of his displeasure with the Sector Plan relates to inaction by the County, rather than this Applicant. He also agreed that the Applicant is trying to do its share to solve the pedestrian problems in Glenmont, but is not responsible for solving them alone.

In a letter submitted after the hearing, Mr. McAteer suggested that the appropriate density for redevelopment of the subject site would be approximately 690 units, almost double the number of units currently on the site. See Ex. 129. He stated that this is the level of development that the current zoning would allow, and it would be more in keeping with Glenmont.

Laura McAteer is Michael McAteer's wife. She is concerned about the physical size of the proposed development as well as population density and traffic. See Ex. 128(a). She acknowledges that the proposed development would be in accord with the Sector Plan. However, having seen the County totally disregard the Sector Plan in deciding to place a Metro garage and a fire house on the west side of Georgia Avenue, she "no longer hold[s] sector plans to be sacrosanct." *Id.* Ms. McAteer believes that if the proposed project goes forward, it should be drastically reduced in scope, with garden apartments and townhouses. This, she feels, would fit in better with the surrounding apartments, condominiums and single-family homes, and would preserve more open space so the community would not be facing "walls of buildings." Ms. McAteer believes the buildings should not be built right up to the street, but should have a green space in front of them. In her view, placing most of the green space on the inside suggests a private community that is not part of the larger Glenmont community.

Ms. McAteer argues that the higher buildings should be placed behind lower ones, for a more gradual transition, and perhaps commercial areas could have one story on top of the commercial at the front of the building, and more stories to the rear. Having lived in Glenmont for 22 years, she finds it inconceivable that the proposal is to add the equivalent of a small town to this area.

Richard Kauffunger. Mr. Kauffunger is a longtime resident of Montgomery County who testified because of his "grave concerns about the tremendous threat that this proposal presents" to

the viability of the transportation system on which the Glenmont community and this whole area of Montgomery County depends. Tr. July 24 at 253. Mr. Kauffunger referred to recent news reports describing Montgomery County as having the 10th worst congestion in the country, measured by commuting time, and suggested that it is “imperative that every new land use application be critically analyzed in order to protect the health, safety and welfare of all citizens.” *Id.* at 254. He argues that for too long “we’ve allowed a weak implementation of the adequate public facilities ordinance to overwhelm our lives.” *Id.* Mr. Kauffunger maintains that if traffic impacts are not adequately addressed at the zoning stage and the application is approved, pressures are created to force approvals later in the process. Moreover, he believes that “[f]ew issues of incompatibility carry the weight that adverse impacts from new development . . . can have on a transportation network and the health and safety of the current residents.” *Id.*

Mr. Kauffunger believes that the proposed Glenmont Metrocenter development is premature, and should be denied and delayed until the Georgia Avenue/Randolph Road grade-separated interchange is fully funded and construction is underway. He provided an analysis of the Applicant’s traffic evidence and relevant legal provisions to support his position. Because Mr. Kauffunger touched on several areas, his arguments are divided into sections for ease of reference.

1. Key Elements of LATR Guidelines

Mr. Kauffunger referred to four sections of the LATR Guidelines. First, the Guidelines state that they were developed for the purpose of analyzing the adequacy of public facilities at the time of subdivision review, and that they are useful guides at the zoning stage. [The Applicant correctly pointed out, on rebuttal, that the LATR Guidelines instruct applicants to follow the LATR Guidelines in connection with rezoning and other regulatory applications. See LATR Guidelines at 1.]

Second, on page 12 the Guidelines state that when development is conditioned on transportation improvements, those improvements must be bonded or under construction prior to the issuance of building permits for the development. In Mr. Kauffunger’s view, a commitment should be made at the zoning stage that no building permits will be issued until required transportation improvements are under construction. See *id.* at 255.

On page 31, the LATR Guidelines state that with regard to publicly-funded improvements, the County's Capital Improvement Program ("CIP") and the State's Consolidated Transportation Program ("CTP") should be the relevant guides. For a transportation project to be used in a traffic study, the Guidelines state, it must be fully funded for construction within four years in the CIP or the CTP.

On page 21, the LATR Guidelines set forth application procedures in central business districts and Metro policy areas emphasizing the adequacy of traffic flow. Mr. Kauffunger explained that this section requires a queuing analysis if CLV is over the congestion standard of 1,800. That means the developer must measure queues under existing, background and total (with proposed development) conditions. The average queue length in a weekday peak hour should not extend more than 80 percent of the distance to an adjacent, signalized intersection, provided that intersection is at least 300 feet away. Mr. Kauffunger maintains that queues longer than this are witnessed throughout the greater Glenmont/Layhill area. *See id* at 257.

2. Feasibility of Proposed At-Grade Improvements

Mr. Kauffunger argued that the Applicant should not be permitted to rely on the proposed at-grade improvements to Georgia Avenue because they are not feasible. His support for this argument has several elements: (i) Technical Staff originally considered the improvements not feasible when they were considered in conjunction with the Indian Springs subdivision; (ii) language in the traffic study prepared for the Indian Springs subdivision arguably suggests the improvements are not feasible; and (iii) the Applicant has not established that the right-of-way necessary for the improvements would be available.

Mr. Kauffunger first cited the MNCPPC staff report from the Indian Springs subdivision case. *See id.* at 258; Ex. 119. The report notes that the Georgia Avenue/Randolph Road intersection is not expected to pass the congestion standard test, and identifies potential intersection improvements that would allow the intersection to pass, i.e., the two improvements to Georgia Avenue that the Applicants in this case have offered: an additional southbound through/right turn lane and an additional northbound right turn lane. The Indian Springs staff report includes a statement that

Technical Staff considers these improvements not feasible due to right-of-way constraints and park impacts. See Ex. 119 at 10. Staff recommends, instead, a pro-rata contribution towards the cost of a grade-separated interchange. On cross-examination, Mr. Kauffunger admitted that the author of the transportation section in that staff report, David Payne, testified at the Planning Board hearing on the Indian Springs subdivision that the staff report was incorrect. See Tr. July 24 at 304. Mr. Payne explained, as recorded in the transcript of the Planning Board hearing, that the at-grade improvements are feasible because they would require essentially the same right-of-way acquisition as the grade-separated interchange. See Ex. 123, Transcript at 312.

Mr. Kauffunger next cited a phrase in the traffic study that the developer submitted in the Indian Springs case, which suggested that one of the proposed at-grade improvements was “not practical.” See Tr. July 24 at 261; Ex. 120. He also referred to disclaimer language stating that the improvement recommendations in the study are conceptual, and not based on field work to assess elements such as right-of-way conditions. In a letter submitted on rebuttal, Wes Guckert, the author of that traffic study, stated that the phrase “not practical” meant only that it would not make sense to construct at-grade improvements only to have them ripped out a short time later for construction of the grade separation. See Attachment 1 to Ex. 142. It did not mean that Mr. Guckert considered the improvements not feasible. See *id.* Mr. Guckert further explained that the disclaimer language is a standard part of every study his firm prepares, and is intended to alert the reader that additional design work is required, not to suggest that the recommended improvements are not feasible. See *id.*

Mr. Kauffunger made a detailed analysis of the lane widths at Georgia Avenue and Randolph Road, using information in the Indian Springs subdivision traffic study. He demonstrated that most of the lanes at the intersection are less than the standard 12-foot width used by the SHA for divided highways, some as narrow as nine feet wide. He stated that the impact of these narrow lanes is that turning vehicles cannot stay in their lanes, with the result that they end up partially blocking adjacent lanes. In addition, because receiving lanes are too narrow, drivers are intimidated, which affects how quickly they can get through the intersection. See Tr. July 24 at 266.

Mr. Kauffunger argued that one reason there are such narrow lanes at this intersection is because of the fire station on the corner, which has made it impossible to add a turn lane in the past due to the need for space for fire trucks to back up. He admits that circumstances are different today, because plans are underway to move the fire station to a location across from the Metro station. Another reason, he suggests, is that when the SHA added the latest nine-foot turn lane, WMATA refused to relinquish additional right-of-way from the land it owns along Georgia Avenue. Mr. Kauffunger has no evidence to suggest this actually took place, he is merely making a deduction from the fact that the narrow turn lane was built shortly after Metro was constructed. See Tr. July 24 at 270-71.

Mr. Kauffunger next referred to his cross-examination of Mr. Hedberg, during which Mr. Hedberg stated that the right-of-way that would be necessary for the proposed southbound right-turn lane on Georgia Avenue, as well as the receiving lanes, is under the control of MNCPPC. See *id.* at 268. Mr. Kauffunger represents that in fact, the land needed north of Randolph Road is owned by WMATA, and according to MNCPPC staff, the Glenmont Greenway park was built on this piece of land pursuant to a Memorandum of Understanding between WMATA and MNCPPC. See *id.* Mr. Kauffunger testified that the County spent almost half a million dollars putting in landscaping, a trail and other amenities to create the park. The Applicant argued on rebuttal that similar right-of-way acquisitions would be needed for the at-grade improvements or the grade-separated improvements, and that the County and the State will make sure that some kind of improvements are made to this intersection, so one way or another the right-of-way will be acquired.

Having weighed Mr. Kauffunger's contentions against the findings of Technical Staff, the Planning Board and the traffic experts hired for the present cases and the Indian Springs case, the Hearing Examiner finds that the preponderance of the evidence indicates the proposed at-grade improvements are reasonably probable of fruition in the foreseeable future. This finding is influenced by the clear impression from this record that the County and the State intend to take some kind of action at Georgia Avenue and Randolph Road, suggesting that they will ensure that the necessary right-of-way can be obtained.

3. Pedestrian Safety

Mr. Kauffunger echoed concerns raised by other community members about how difficult it is for pedestrians to cross the intersection of Georgia Avenue and Randolph Road. Currently, a person walking along Georgia Avenue has to cross seven lanes of traffic to get across Randolph Road. If the proposed at-grade improvements are built, that would increase to eight lanes on the north side of the intersection and nine on the south side. Mr. Kauffunger notes that students at Kennedy High School often have to cross this intersection, and that the center island is a narrow, three-foot median. He stated that children in the apartments north and west of Randolph Road also have to cross this intersection to reach nearby playing fields. Mr. Kauffunger believes that the vehicular and pedestrian conflicts can be cured only with the proposed grade-separated interchange. Based on his review of plans for the grade separation, there would continue to be traffic signals to accommodate turning movements, but eliminating some of the conflicts would lead to longer light cycles, plus the plans call for lights to give pedestrians the right to cross. That freedom cannot be given to pedestrians currently because of concerns about getting the cars through the intersection. See Tr. July 24 at 274-75.

4. Inadequacy of Traffic Study

Mr. Kauffunger compared the Indian Springs subdivision traffic study with the traffic study prepared in this case, and noted with surprise that the total expected CLV is lower in the present cases than in the Indian Springs case, even though the traffic expected from Indian Springs is part of the background traffic for the present cases. *Compare* Ex. 120 at B24 with Ex. 62(a) at 21. He questioned how it is possible that with more development – adding the proposed Glenmont Metrocenter development to the traffic identified in the Indian Springs case – the analysis shows a lower CLV. See *id.* at 276. Even acknowledging that the traffic study in the present case used lower traffic counts than the ones that were used in the Indian Springs case, Mr. Kauffunger finds it implausible that with the hundreds of trips added by the development proposed here, the CLV results would be lower. He blamed some of the discrepancy on the 149 trips that disappeared on

southbound Layhill Road between Glenallan Avenue and Georgia Avenue, which Mr. Hedberg suggested went into the Metro garage.

5. Inadequacies of CLV Methodology

Mr. Kauffunger has talked to transportation experts in academia and at the SHA in an effort to identify better methods than the current CLV analysis for the County to use in assessing traffic congestion.²⁴ He learned from a Professor of Transportation at the University of Maryland School of Civil Engineering, Dr. Chang, that CLV is considered a crude method of analyzing congestion that was used 25 to 30 years ago and has fallen out of favor across the United States. See *id.* at 280-81. Dr. Chang stated that Maryland and Montgomery County are among the rare jurisdictions that still use it, although he admitted that he is a resident of Montgomery County and therefore biased. Dr. Chang described CLV methodology as appropriate only for intersections that are isolated. Where there is a series of intersections fairly close together, Dr. Chang explained, complications arise such as spillback from one intersection to the one before it, which CLV methodology does not measure. See *id.* at 280. Mr. Kauffunger learned from Dr. Chang that most states use a highway capacity approach, or computer simulation techniques.

Mr. Kauffunger stated that one of the SHA analysts he spoke with, Heather Murphy, Assistant Division Chief of Planning and Preliminary Engineering, agreed that CLV has serious limitations, and that in other areas people rely on computer simulations. See *id.* at 282.

Mr. Kauffunger also spoke with Phil Tarnoff, who runs the University of Maryland's Center of Advanced Transportation Technology and Technology Transfer Center. See *id.* Mr. Tarnoff provides consulting assistance to state transportation departments and the federal government, including the SHA. He suggested that CLV methodology should be used only as a design tool, and is very dangerous to use with congested intersections because all it measures is the traffic that traffic

²⁴ This line of testimony was admitted over the objection of Applicant's counsel, who noted that all of it consisted of hearsay (testimony from one person about what another person said, to prove that what the other person said was true), with no opportunity to cross-examine or otherwise determine the veracity of the testimony. See Tr. July 24 at 284. Hearsay rules do not apply to administrative proceedings, so the testimony was permitted. It must be acknowledged, however, that the weight given to hearsay testimony is significantly less than the weight the same testimony would be given if the original speaker were present and available for cross-examination.

signals let through, not the number of vehicles *trying* to get through. See *id.* at 282-83. Mr. Kauffunger learned from Mr. Tarnoff that when an intersection is heavily congested, the CLV count is limited by the congestion, so CLV does not get higher and the intersection continues to pass the CLV test. Mr. Tarnoff recommended methodologies that simulate the traffic network. To reduce the cost, he suggested that one could use aerial photographs to see how far back from an intersection the queues extend.

Mr. Kauffunger also spoke with the Administrator of the SHA, Neil Peterson, who was more restrained in his comments, but acknowledged that CLV analysis has severe limitations, and its use in relation to “unstable, over-capacity intersections is very unreliable.” *Id.* at 283-84.

Mr. Kauffunger described spillback as one of the principal problems at this site, with lengthy queues extending back from Georgia Avenue and Randolph Road, up Layhill Road, all the way to its intersection with Glenallan Avenue. In the morning, the queue extends up Randolph Road to the traffic light at Randolph and Glenallan. See *id.* Mr. Kauffunger stated that spillback is what drivers are worried about, because that's what causes delay. They are not concerned about how many conflicting movements there are in an intersection, they are concerned about how long it will take to get through the intersection. The very long queues, Mr. Kauffunger maintains, are the reason the County is looking at a grade-separated interchange.

6. Lengthy Vehicle Queues Approaching Georgia Avenue/Randolph Road Intersection

Mr. Kauffunger's photographs of vehicles waiting to go through the intersection of Georgia Avenue and Randolph Road are presented in Part III.F.

7. Sector Plan

Mr. Kauffunger also offered some testimony about the Sector Plan. Due to the lateness of the hour at the point in the hearing, Mr. Kauffunger cited key sections of the Sector Plan without reviewing them in detail: the “Vision”, the Planning goals, the recommended open space system including the Glenmont Greenway, and the plan's design recommendations for improvements to the Georgia Avenue/Randolph Road intersection, which recognize that pedestrian crossings at this location are vital.

Mr. Kauffunger weakened the impact of his Sector Plan references somewhat by refusing to answer any questions about the Sector Plan on cross-examination, stating that he had not reviewed the plan closely enough to offer any opinions about it. See Tr. July 24 at 313-314.

8. TS-R Zone Purpose Clause

Mr. Kauffunger next addressed the purpose clause for the TS-R Zone, at Section 59-C-8.22 of the Zoning Ordinance. He stressed that the fourth line states the purpose of the zone is “to prevent detrimental effects on the use or development of adjacent properties or the surrounding neighborhoods.” Tr. July 24 at 295. Mr. Kauffunger noted that Section 59-C-8.25, Public Facilities and Amenities, states that a development “must conform substantially to the facilities and amenities recommended by the approved master or sector plan.” In his view, giving up the Glenmont Greenway would be inconsistent with this provision. See *id.*

8. Development Plan Findings

Referring to the five findings the District Council must make under Section 59-D-1.61 to approve a development plan, Mr. Kauffunger emphasized subparagraphs (a) and (b). He argued that his evidence demonstrates that without the grade-separated interchange, the proposed development would not be compatible with the surrounding area in Glenmont, or even the greater area, because of negative impacts on the transportation system and pedestrians. Mr. Kauffunger maintained that the weight accorded to Mr. Hedberg’s professional judgment should be assessed in light of the fact that he was not aware of the ownership of some of the land that would be needed for the proposed at-grade improvements, the methods of acquiring parkland, the lane widths at Georgia Avenue and Randolph Road and why those lanes came to have those widths, the history of the proposed additional right-turn lane on Georgia Avenue and why that lane has never been carried out even when developers have offered it as an improvement. See Tr. July 24 at 296. Mr. Kauffunger contends that without all of those pieces of information, Mr. Hedberg’s opinion that the at-grade improvements are reasonably probable of fruition in the foreseeable future has no foundation.

Mr. Kauffunger appears to be concerned about two alternative possibilities: (i) that if the rezoning is approved, the grade-separated interchange is not funded in a timely fashion and the

Applicant cannot carry out the at-grade improvements because of right-of-way problems, the Applicant will nonetheless be permitted to complete at least Stage 1 of the project without any roadway improvements; and (ii) if the Applicant proceeds with Stage 1 and is able to carry out the at-grade improvements, the reconstruction of the Georgia Avenue/Randolph Road intersection will be far more difficult, leading to even worse congestion during the construction process for the grade separation. See *id.* at 296-97.

9. Cross-Examination

When asked on cross-examination whether he is a proponent of the grade-separated interchange at Georgia Avenue and Randolph Road, Mr. Kauffunger replied that he believes “it’s the solution to the problems facing Glenmont.” *Id.* at 301. He acknowledged that the grade separation is the County’s top priority for state road improvement projects.

When asked whether the same right-of-way would be needed for either the grade-separated interchange or the at-grade improvements, Mr. Kauffunger stated that he did not know. He added that he specifically asked people at the SHA and they could not tell him.

Mr. Kauffunger acknowledged that if the rezonings are granted, the proposal will be retested at subdivision to determine what portions may move forward. He noted, however, that in his experience, “if you do not get your concerns expressed at time of re-zoning you will never have an opportunity to really express them at time of subdivision.” *Id.* at 302.

Mr. Kauffunger acknowledged that Transportation Planning Staff member David Payne, the author of the transportation section in the Staff Report for the Indian Springs subdivision case, stated during the Planning Board’s hearing on the subdivision application that the Staff Report was incorrect, and in fact the at-grade improvements proposed are feasible. He noted, however, that Mr. Payne also stated that the land needed for the right-of-way is owned by Park & Planning, so there would be no problem in providing it. That, Mr. Kauffunger maintains, is factually incorrect. See *id.* at 304. Mr. Kauffunger characterized Mr. Payne’s testimony at the Planning Board hearing as a “flim flam,” a game of “catch me if you can.” He saw it as backing off from a finding without any rationale. See *id.* at 310.

Kevin J. Barth. Mr. Barth resides in a two-bedroom apartment on the subject property. See Ex. 89. He finds the number of units proposed to be a huge increase over the current complex, raising concerns about overcrowding and traffic. He states that many current residents who will be displaced will be hard-pressed to find comparable housing at comparable rates in Montgomery County. The rent on his unit is \$1,100 to \$1,200 per month, well below the rates projected at the new development. Mr. Barth suggests that some assistance needs to be provided for current residents, some of whom have lived on the site for ten years or longer. Finally, Mr. Barth finds that the commercial buildings have the potential to be exclusionary and ugly, and that their architecture needs to fit in with architectural styles in the area. *See id.*

Deborah Shum grew up in Glenmont and has chosen to continue living in Glenmont as a working adult. She has been using Metro for her work commute for more than ten years, loves Glenmont and does not want her neighborhood to be jeopardized by new development. See Ex. 113. Ms. Shum applauds the effort to bring new retail options to the area, but is opposed to the high density residential proposed for the site. In her view, the taller buildings and walls would act as barriers, dissuading non-residents from entering the complex to participate in the retail and commercial options. Ms. Shum believes that creating “an island of upscale homes surrounded by a wall would marginalize the community,” whereas building an open complex would allow the new residents to be part of the existing neighborhood and would encourage walking and Metro use. *Id.*

Charles W. Harris has lived in Glenmont for 34 years. He views the proposed development as a “mammoth” project that will have a detrimental effect on the community because of traffic and building size. See Ex. 1127(a). The proposed development will bring more than 2,300 additional cars to an already-congested area, despite the basic objective of the Sector Plan to encourage walking. Mr. Harris believes that instead of bringing in an increase in population involving people of means who will have cars, the goal should be to improve pedestrian access to the Glenmont Metro station via feeder buses, shuttles, bicycle paths, etc. Mr. Harris describes Glenmont as a small community of small houses and garden apartments. He expects that the proposed development, with buildings rising to more than eight floors, would tower over surrounding structures.

He suggests that a reasonable compromise would be to reduce building heights and the number of units. [Note: Maximum building height has since been set at seven stories, with 50-foot and 65-foot height limits along Layhill Road.]

David J. Kaplan is a former resident of Montgomery County who now resides in Michigan. He submitted a lengthy statement about the historic significance of the Kensington-Glenmont Fire Station, which is located at the corner of Georgia Avenue and Randolph Road and is slated to be razed for the proposed grade-separated interchange. See Ex. 108. Mr. Kaplan contends that the fire station is historically significant because at the time of its construction in 1953 it was the only public service building north of Wheaton, and its architect was very well known. Mr. Kaplan does not express any views about the development proposed at the subject site. [Note: Max Bronstein, who served on the site selection committee for a new fire station, does not recall any mention of the existing station having historic significance.]

IV. SUMMARY OF HEARING

A. Applicant's Case in Chief

1. Kevin Roberts, Applicant's representative. Tr. June 26 at 16 – 49; July 16 at 19-21.

Mr. Roberts has been a real estate developer for the JBG Companies, the developer behind the Applicant entity, for seven years, and is JBG's project manager for the Glenmont Metrocenter project. He holds two bachelors degrees and a masters degree in city planning. Locally, he worked on the Twinbrook Station development and is currently working on a joint mixed-use project in Rockville with WMATA. Developing near and adjacent to Metro stations is part of JBG's development philosophy, and its transit-oriented projects in Montgomery County include Silver Spring Square, Silver Spring Gateway, Twinbrook Station and White Flint Crossing.

Mr. Roberts described the area surrounding the subject site as largely residential. He noted that the most prominent neighbor is WMATA, whose property surrounds the subject property on three sides: a Metro garage to the south; WMATA property that is slated for a new Metro garage to the west; and a WMATA rail storage yard to the north. The rest of the area he described as post-

World War II single-family homes to the west, southwest and north, and multi-family residences to the east across Layhill Road.

Mr. Roberts described the subject property as approximately 30.9 acres of land with 352 garden-style apartments in 18-20 buildings constructed during the 1960s. The buildings mostly have two or three stories, with brick facades, surrounded by surface parking. Mr. Roberts noted that the site has undulating topography and a stream valley at the north end, and most of it is enclosed with a fence.

Mr. Roberts stated that JBG is “excited to have the opportunity to create a successful place in an area that has not seen significant development or investment in decades.” Tr. June 26 at 20. Mr. Roberts testified that JBG envisions the proposed Glenmont Metrocenter as a transit village that incorporates the fundamentals of Smart Growth, including a mix of uses, Metro orientation and environmental sensitivity, while also offering upgraded amenities. JBG hopes to bring in nice restaurants, small shops, a new grocery store and a café with outdoor seating along a central plaza. Residential components are to include townhouses, loft apartments, flats and live/work units as a space for small businesses. [Applicant’s counsel interjected that community members expressed a desire for live/work units at a community meeting.]

Mr. Roberts noted that providing a mix of housing types would create a range of price points. He opined that a working community cannot be established without providing reasonably priced housing alternatives in each stage, and dispersing MPDUs throughout the community. At full build-out, between 12.5 and 14.5 percent of the total units would be MPDUs of varying sizes, designed to appeal to middle income residents.

Mr. Roberts described a proposed central plaza as a key element of the proposed plan, which would help define the project as a special place, encourage neighbors to interact, and be the central link among the bike paths, pedestrian trails and other parks on site. JBG intends to use appropriate traffic calming devices and pedestrian safety measures to ensure a walkable community. They envision townhouses on the east side of the site, with a mix of sizes and widths, and on the west

side, near the corner of Georgia Avenue and Glenallan Road, a mix of multi-family housing with some retail on the ground floor.

Turning to the importance of the TS-R Zone, Mr. Robins stated that the requested rezoning would permit the critical mass necessary to successfully create a place offering multiple housing types as well as retail and other amenities. To maintain the public spaces, all owners, retail tenants and homeowner associations would be bound by covenants requiring contributions to the cost of regular maintenance activities, to be carried out by on-site property management.

Mr. Roberts stated that JBG is “proud to be in the forefront of environmentally sensitive development.” Tr. June 26 at 31. He noted that JBG built the first green roof in Montgomery County and the largest one in Washington, D.C. The Glenmont Metrocenter project has been designated as a LEED Neighborhood Development Pilot Program. Mr. Roberts explained that LEED stands for Leadership in Energy and Environmental Design, and the pilot program involves a standard that has been established by the U.S. Building Council to highlight projects located next to mass transit. The project will have LEED-trained professionals on staff, and JBG intends for the buildings to be LEED-certified. Mr. Roberts emphasized that environmentally sensitive development measures are “hard core values” for JBG, in its own offices and in its developments.

Mr. Roberts testified that JBG has made many efforts over a period of several months to inform and solicit input from the community. This has included individual meetings with several community members, including hearing participants Sue Johnson, Vicki Vergagni and Max Bronstein, two meetings with the Citizens Advisory Board, a meeting in May 2007 with local homeowner associations, and an open house, also in May, held at Brookside Gardens. JBG also established a web site to provide information on the project, including frequently asked questions and a site plan.

Mr. Roberts noted that the most recent community meeting, just five days before the first hearing date in this case, was put together by Martin Klauber, People’s Counsel, who served as a facilitator. Several agreements were reached at that meeting, including a reduction in the maximum building height to seven stories, the creation of a community liaison council, and a promise by JBG to work with the community during the preliminary plan and site plan stages on several important issues,

including building locations, site planning, openness in design on Layhill and Glenallan Avenues, setbacks, and parking on Glenallan. Mr. Roberts emphasized that JBG wants to create a project that will fit into the neighborhood. He noted that although the Applicant has not reduced the maximum density for which approval is sought, the reduction in maximum height will in all likelihood result in a project with fewer than the maximum number of units permitted.

Mr. Roberts anticipates that if the rezoning is approved, construction will start in the second quarter of 2009, and Stage I will be complete by 2012-2014. Stage 2 would begin soon after that, assuming that improvements to the Georgia Avenue/Randolph Road intersection are in place. Mr. Roberts opined that the entire combined property should be rezoned now, with the staging mechanisms in place, to let the community know what is planned for the site. He agreed to all of the other binding elements shown on the Development Plan. See *id.* at 47. Binding element No. 4, related to staging, was revised later in the hearing, with Mr. Roberts' consent, to include stronger language regarding Stage 2 phasing.

Mr. Roberts opined that the proposed development would be in the public interest, noting that the project has been recognized as a smart growth project by the Washington Smart Growth Alliance, an organization that identifies developments that contributes to smart growth and the overall health of the region. See Tr. July 16 at 20.

2. Grant Ehat, Applicant's representative. Tr. June 26 at 50–60.

Mr. Ehat has been JBG's President of Retail for 15 years, and also oversees the leasing department. He has been involved in all stages of real estate development from land acquisition to construction to finding tenants and leasing the space. In Montgomery County, Mr. Ehat has been involved with mixed use projects such as Twinbrook Station, a Rockville Pike project called North Bethesda Market and White Flint Crossing. He noted that JBG also has several shopping centers on Rockville Pike, including Pike Center and Twinbrook Square.

Mr. Ehat stated that as JBG's retail affiliate, his unit has assisted in the layout for this project and discussed potential retail prospects. He opined that the subject site would be a good location for retail. He confirmed JBG's intention to create a mixed-use, transit-centered environment

where people can live, work shop and play. Mr. Ehat hopes to have tenants at this location such as a grocery store, a coffee shop and neighborhood restaurants. He noted that JBG was involved in leasing a former Hechinger building nearby a few years ago, and had a number of tenants interested in the space. From the absence of vacancies on the market, he believes it is a solid retail location, particularly if JBG can bring in an anchor tenant, which he thinks they can.

When asked how the project would be integrated with the surrounding community, Mr. Ehat testified that JBG tries to build every project with the immediate environment in mind, to create something that will appeal to the existing population in the area. Typically, the residents of the project itself will not be enough to support the retail, so it has to be appealing to the general community as well. See Tr. June 26 at 53-54. Mr. Ehat observed that JBG typically talks directly to the community about what kind of businesses they want, and they often get requests for a particularly tenant or type of tenant. Based on the local demographics, he would not try to put in a high-end restaurant at this location, but more local restaurants, and a mainstream grocery store. Mr. Ehat expects the retail proposed at this location would also be convenient for Metro riders looking for breakfast, or wanting to stop at a grocery store before heading home, or looking for a convenient place to have a meal or a drink with friends.

3. Stephen Gang, land planner. Tr. June 26 at 62-246; Tr. June 29 at 74-202.

Mr. Gang was designated an expert in land planning and zoning. He testified that his firm prepared the Development Plan and most of the other exhibits submitted as part of the instant application. He noted that he is very familiar with the area of the subject site because he lives about one mile to the north on Layhill Road. See Tr. June 26 at 102. His testimony covered the site and surrounding area, the Sector Plan, a description of the development blocks, the requirements of the TS-R Zone, the development plan findings called for under Section 59-D-1.619(a) and the public interest.

Site and Surrounding Area. Mr. Gang voiced his agreement with the surrounding area as defined by Technical Staff. He identified on an existing land use plan, Exhibit 62(n), outlines

showing a five-minute walk and a ten-minute walk from metro. These indicate that the vast majority of the subject site is within a five-minute walk of the Metro.

Mr. Gang reviewed a series of photographs of the site and areas immediately surrounding it. See Exs. 35-39. Nearby public facilities include Wheaton Regional Park, less than a mile south on Georgia Avenue. Just north of that are the Wheaton Regional Library and the Wheaton Community Center. There are also two local neighborhood parks within a quarter-mile of the site, a new community center proposed about a mile up the road, and a police station and fire station at the corner of Georgia Avenue and Randolph Road.

Mr. Gang emphasized that nothing has really changed in Glenmont in some time, so it is critical to make sure this proposed development will mesh with existing Glenmont. See Tr. June 26 at 90.

Sector Plan. Mr. Gang readily admitted that the proposed development would change what Glenmont is today. See Tr. June 26 at 103. That, he argues, was part of the Sector Plan's vision and one of the reasons that a specific sector plan was created for the area. The Sector Plan was prepared shortly before the scheduled opening of the Glenmont Metro Station in 1997, which was an opportunity for change. Mr. Gang hopes that redevelopment of the 30-acre subject site, the planned WMATA improvements and road improvements will start creating opportunities for other redevelopment in the area, particularly in the Glenmont Center, as envisioned by the Sector Plan. Mr. Gang provided a very detailed analysis, summarized in Part III.E. above, to support his opinion that the proposed development would carry out the Sector Plan's recommendations.

Description of Development Blocks. Mr. Gang's description of the various development blocks identified on the Development Plan is summarized in Part III.D.

Requirements of the Zone. Mr. Gang opined that the present application satisfies the intent of the TS-R Zone, which has three components. First, the entire site, including the parcel that is zoned O-M, is designated as a transit station development area in the Sector Plan and is within 1,500 feet of a Metro station. The Sector Plan defined an area called the "Glenmont Center," which includes the O-M parcel, and designated the whole Glenmont Center as a transit station development area.

Second, the subject site is in an area where multi-family housing already exists, both on the subject site and across Layhill Road. Third, the submitted Development Plan takes advantage of the design flexibility permitted in the TS-R Zone and meets the objectives of the Sector Plan.

Mr. Gang pointed out that the O-M portion of the site still had an operating bank when the Sector Plan was adopted, and was not under common ownership with the rest of the subject site. Thus, the bank was expected to remain in operation. Today, it is under common ownership with the rest of the subject property and, Mr. Gang considers it advantageous to include it as part of these applications. First, having already been in commercial use, it could be a good location for the live/work units community members requested. Second, that corner of the site is one of the most important view corridors coming into Layhill, so it is important to look at it as part of the larger site.

Mr. Gang opined that the present applications also satisfy the purpose clause of the TS-R Zone, which has four components. First, the proposed Development Plan would promote the effective use of the transit station development area by creating a predominantly residential community with ancillary retail. Second, it would provide residential uses and neighborhood-oriented, convenience retail. Third, the proposed development would include a variety of dwelling unit types, including townhouses, apartments over retail, live/work units, and low-rise and mid-rise multi-family buildings. Fourth, Mr. Gang concluded that his previous testimony demonstrated compliance with the purposes of the Zone to promote freedom in design, stimulate coordinated and harmonious development, and promote the health, safety and welfare of present and future residents. See Tr. June 29 at 176-77.

Section 59-C-8.24 specifies that the TS-R Zone is permitted only in a Transit Station Development Area and in accordance with an approved and adopted master or sector plan. Mr. Gang reiterated his testimony that this requirement is satisfied.

Section 59-C-8.25 requires that a TS-R development conform substantially to the facilities and amenities recommended by the applicable sector plan. Mr. Gang noted that the proposed development provides more than the required amount of open space.

Section 59-G-8.3 consists of a land use table for the TS-R Zone. Mr. Gang noted that everything proposed for the subject site is permitted by right in the zone except for a child day care center (a use suggested in the Sector Plan), which would require a special exception.

Section 59-C-8.4 consists of a development standards table. Mr. Gang reviewed the elements and concluded that the proposed development plan complies with each one. See Tr. June 29 at 178-79; 185-187.

Section 59-C-8.5 contains special requirements for the TS-R Zone: building height is to be determined at site plan; parking is to be located so as to have a minimal impact on an adjoining residential properties; interior streets may be private or public but must be paved and maintained and have a minimum width of 20 feet for two-way traffic and ten feet for one-way; and ancillary commercial uses may be permitted under certain conditions. Mr. Gang referred to his earlier testimony about off-street parking, noted that all streets would conform to the stated requirements, and stated that the commercial uses would be provided as recommended in the Sector Plan, as ground level retail.

Development Plan Findings. Mr. Gang opined that the proposed Development Plan satisfies all requirements for the five findings the District Council must make under Section 59-D-1.61. Mr. Gang stressed that the first finding requires *substantial* compliance with the Sector Plan, not compliance in every detail. He suggested that this covers situations like the present case, where common ownership of the O-M parcel was not anticipated at the time the Sector Plan was approved. Mr. Gang stated that the proposed uses would be in complete compliance with the use and density proposed in the Sector Plan, and would not conflict with or depend on any capital improvement program or other county policy, including the County's housing policy, which seeks to foster a range of housing types, preserve open space and agricultural areas, encourage compact residential and commercial development in areas served by public infrastructure and foster innovative planning and design efforts. See Tr. June 29 at 182.

Mr. Gang reiterated, with regard to Section 59-D-1.61(b), that the proposed Development Plan complies with all requirements of the zone. He opined that the proposed development would provide for the maximum safety, convenience and amenity of residents of the

development and would be compatible with adjacent development. He noted the pedestrian-friendly sidewalk system and low-speed vehicular travel lanes with parallel parking on both sides, significant amenities for residents and visitors to enjoy, and proximity to Metro. With regard to compatibility, he referred to his earlier testimony concerning transition of building heights and what uses surround the property, as well as the easy access to the site that the street network would provide.

Addressing Section 59-D-1.61(c), Mr. Gang opined that the proposed internal vehicular and pedestrian circulation system and points of external access would be safe, adequate and efficient, as provided for in the "Binding Design Principles" on the Development Plan.

With regard to Section 59-D-1.61(d), Mr. Gang pointed to the testimony of environmental experts establishing that the proposed development would tend to prevent soil erosion and preserve and enhance natural features of the site.

Finally, with regard to Section 59-D-1.61(e), Mr. Gang referred to statements by Counsel and testimony by Mr. Roberts concerning perpetual maintenance.

Public Interest. Mr. Gang opined that the proposed development would be in the public interest for three basic reasons. First, the applications are consistent with the Sector Plan recommendation and county policy to concentrate densities on properties close to Metro. Second, water, sewer, schools and public roads would not be adversely affected by this development. Third, the development would help make better use of the County's substantial investment in Metro. See Tr. June 29 at 187.

Mr. Gang offered four reasons why it would be appropriate to rezone the entire site at this time: (1) the traffic study demonstrates that the road network is adequate to accommodate both stages; (2) a grade-separated interchange at Randolph Road and Georgia Avenue is one of Montgomery County's top priorities for construction in the near future, has been designed and has been the subject of right-of-way acquisitions; (3) staging can be adequately determined during subdivision review; and rezoning the entire combined property at one time would provide for a more thorough, comprehensive planning process, conserve county resources and allow the future planning and approval process to continue in a coordinated manner. See Tr. June 26 at 245-46.

Cross-examination by People's Counsel. Under cross-examination, Mr. Gang conceded that the O-M portion of the subject site is recommended for commercial use on the Sector Plan's Proposed Land Use map. See Tr. June 29 at 189. He conceded that the O-M parcel was not recommended for the TS-R Zone in the Sector Plan, or for multi-family residential use. Mr. Gang reiterated, however, that the O-M Zone is part of the Transit Station Development Area designated in the Sector Plan, and pointed out that the intent and purpose clause for the TS-R Zone do not require that a site be recommended for the zone in a master or sector plan. Mr. Gang referred to a recent Bethesda rezoning case, Local Map Amendment Application No. G-850, involving Lots 31 and 31A, where part of the site did not have a specific TS-R recommendation in the Sector Plan, but rezoning it to TS-R with the larger parcel was determined to be in the public interest. See Tr. June 29 at 193-94. Similarly, he opined that it would be in the public interest to rezone the O-M portion of the subject site with the rest of the site, given that the legal requirements have been satisfied.

4. Daniel Edward Pino, civil engineer. Tr. June 29 at 14-42; Tr. July 16 at 38-49.

Mr. Pino was designated an expert in civil engineering. He testified that the concept stormwater management plan was prepared based on a general understanding reached with DPS early on, then was submitted for approval. DPS has made comments, which the Applicant addressed, and Mr. Pino reported that they were "very close to the coming to a final agreement on the concept plan" at the time of his June 29 testimony. Mr. Pino feels strongly that the Applicant can provide all required quality and quantity control on site for both Stage 1 and the combined development, without a need for waivers from DPS. See Tr. June 29 at 26-27, 30. The concept plan provides for a total of 19 facilities in Stage 1: one surface facility providing both quantity and quality control, in Block H; two under-garage quantity control structures in Blocks C-2 and D; five under-garage quality-control structures in Blocks C-2 and D; and 11 surface bio-filtration facilities (sometimes called rain gardens). See Tr. July 16 at 39. In Stage 2, a total of eight stormwater management facilities are proposed: one under-garage quantity control structure in Block B; four under-garage quality control structures in Block B; and three surface bio-infiltration facilities in Blocks C-1 and B. See *id.* at 39-40.

Mr. Pino noted that currently there is very little storm drainage and no stormwater management on the subject site, nothing to control the quality or volume of water flowing into the sewer openings. He opined that controlling the run-off would enhance the stream buffer, which currently suffers from erosion. See Tr. June 29 at 31-32. Mr. Pino testified that the only off-site impact of the proposed stormwater management measures would be to improve the quality of the stream that flows through the property and onto Metro property. He noted that the proposed redevelopment of the site would remove buildings from the stream buffer, and that the only structures to be placed in the stream buffer are temporary sediment control basins. Typically one would not put such structures in a stream basin, but Mr. Pino explained that this step is necessary here, because after the buildings and road are removed from the stream buffer a lot of grading will be required, which moves a lot of dirt.

Mr. Pino testified that there is ample water available via nearby water lines. With regard to sewer, he stated that the northeast portion of the site drains down Layhill Road and then discharges into an existing sewer system. The balance of the site would drain into an existing sewer line running through the stream valley, with no need to disturb the stream buffer because that line is already in place and comes all the way through the site. Mr. Pino stated that gas lines are available in nearby roadways, and electric is everywhere. He concluded that public utilities and facilities are sufficient to accommodate the proposed development, independently for Stage 1 and Stage 2.

Mr. Pino briefly described the concept sediment control plan, which involves sediment traps, earth dikes and super silt beds to control run-off and sedimentation during construction.

Turning to dedications, Mr. Pino noted that the Applicant intends to provide a 20-foot dedication along Georgia Avenue, which would create 77.5 feet of right-of-way from the center line of the road to the property line, consistent with the Sector Plan recommendation for a 145-foot right-of-way. Currently, the width of the right-of-way varies. The Sector Plan calls for a 90-foot right-of-way along Glenallan Avenue, and the Applicant intends to provide a five-foot dedication to create 45 feet of right-of-way from the center line of the road to its property line.

Mr. Pino opined that the design of the proposed development would tend to prevent erosion of soil and preserve natural vegetation and other natural features of the site, and that granting these applications would be in the public interest. See Tr. June 29 at 42.

In response to questions from community member Ann Ambler, Mr. Pino explained that the surface infiltration systems would capture the first half inch of run-off, which is typically where most of the pollutants are. See *id.* at 54. In a very large storm, the storm drain system would collect all the run-off, beyond what the surface infiltration systems can hold, and convey it to the quantity control structures. Those would be sized as required by DPS, which sometimes requires facilities large enough to capture a one-year storm, and sometimes requires them for a 10-year storm, depending on the circumstances. The quantity control structures would release the water to the stream at a gradual rate. See *id.* at 57. Mr. Pino added that it is very common in a mixed-use development like this to have quantity control facilities underground. [Mr. Der interjected that the proposed redevelopment provides an opportunity to reduce the rate at which stormwater is released into the stream, which currently is uncontrolled. This would allow the eroded stream banks to start to recover. See *id.* at 59.]

5. Edward Woodman Brown, water resources engineer. Tr. June 29 at 43-55.

Mr. Brown was designated an expert in water resources engineering and ecological restoration. His company, Bio Habitats, does ecological restoration, conservation planning and “regenerative design.” His work focuses on the development of innovative and sustainable stormwater management plans for large and challenging sites in a manner that can improve environmental features of those sites. He also does a lot of work in creating and restoring impaired habitats. Mr. Brown’s role in the present case has been to work with the other team members to investigate opportunities to use innovative and sustainable stormwater management practices on this site that will mesh with the stream valley corridor. They have looked at vegetative filtering of stormwater runoff and managing the runoff to avoid large concentrations of flow in short periods of time, so that there is lag time as the water flows from the site to the receiving stream. They have also looked for opportunities to provide micro-habitats and corridors as refuges for small mammals, birds

and insects in this urban setting, and to provide passive and active recreational opportunities, as well as educational opportunities, for residents and visitors.

Mr. Brown stated that the stream valley is the primary environmental resource, intended as a very natural setting, then progressing from planted landscape areas that might have grasses to a more formal landscaped area at the Metro end of the site. In all of those more formal areas, Mr. Brown explained, there are opportunities to incorporate stormwater management, such as planting in depressed areas, using permeable paving and porous pavement, and providing water features that have an aesthetic component and a stormwater management function. He noted that green roofs may also be used, and along the streetscape areas they can use "stormwater planters," which both provide shade and filter water. Depressed lawn areas also have the ability to receive water, let it infiltrate for some shallow groundwater recharge, and the slowly release it to the receiving stream. Mr. Brown stated that all of these components have been incorporated into the plans.

Mr. Brown opined that given the lack of stormwater management currently on the site, if all of the best management practices being shown on the plans are implemented and properly maintained, there is an opportunity for ecological, environmental and water quality conditions to improve. See Tr. June 29 at 50. Finally, Mr. Brown opined that granting the present applications would be in the public interest. He observed that redeveloping in urban areas theoretically prevents green development from happening in other areas, and promotes a transit-oriented lifestyle that is healthier and creates more vibrant communities. See Tr. June 29 at 54-55.

6. Andrew T. Der, environmental consultant. Tr. June 29 at 55-74, 210-219; Tr. July 16 at 25-38.

Mr. Der was designated an expert in environmental science. He has 23 years of experience in his field, having spent 17 years with the Maryland Department of the Environment and the rest as a private consultant. Mr. Der's primary focus has been on wetland and stream impacts. In the present case, Mr. Der's company was responsible for preparation of the NRI/FSD and forest conservation plans.

Mr. Der noted that the proposed development would preserve the vast majority of existing forest, which is in the stream buffer area. He stated that the only wetlands on the site are in a small area near the stream that would not be impacted by development. Mr. Der described the removal of the buildings and road currently in what should be the stream buffer area as a real benefit, creating an actual stream buffer where now there is only a “paper” buffer. The preliminary forest conservation plan calls for 1.7 acres of forest to be planted near the stream, providing a double bank of trees in the most environmentally sensitive area of the site. The preliminary forest conservation plan also gives the Applicant credit for 1.6 acres of reforestation in the form of “landscape credit,” for “thoughtful planting of trees” as part of the site landscaping. See Tr. June 29 at 67. That leaves an additional mitigation requirement of 4.9 acres of off-site planting, subject to MNCPPC approval. Mr. Der considers the planned reforestation to be a good trade-off for the past clearing of lesser priority forest outside the stream buffer area, on Blocks G and H. See *id.* at 66, 68. He also confirmed that each stage of the proposed development can satisfy forest conservation requirements independently. See *id.* at 71.

Mr. Der opined that the proposed stormwater management plan would comply with applicable regulations, and the site design would tend to prevent erosion of the soil and preserve the natural vegetation and other natural features of the site by improving water quality, habitat and the condition of the stream channel. See Tr. June 29 at 72-73. Mr. Der further opined that granting the present applications would be in the public interest.

In response to questioning from community member Richard Kauffunger, Mr. Der confirmed that MNCPPC has required the Applicant, on its forest conservation plan, to mitigate the impact of a forested area in the northeast corner of the site that was cleared some years ago by the property owner. When asked whether the new plantings would be mature trees or saplings, Mr. Der stated that specific plantings would be determined during site plan review. See Tr. July 16 at 36. Mr. Kauffunger suggested that a binding element be added to the proposed Development Plan regarding the issue. The Applicant has not made such a proffer, which would be an unusual level of detail at the zoning stage.

7. Miguel Iraola, landscape architect and land planner. Tr. June 29 at 220-62.

Mr. Iraola was designated an expert in landscape architecture and land planning. He is a licensed landscape architect and has been in the field about 19 years, 12 in private practice and seven with MNCPPC. He described the focus of his work as urban design, comprehensive planning, town planning, community master planning and site planning.

Mr. Iraola stated that the urban design and planning for the subject site was a collaboration between his firm and Mr. Gang's firm. He observed that the surrounding area for this case has not changed much since the adoption of the Sector Plan or the opening of Metro in 1998. He characterized Glenmont as a suburban cross-roads community, loosely centered around the intersection of Randolph Road and Georgia Avenue. It is comprised of stable residential communities and auto-oriented commercial uses spread along the two primary arterials, but there is no defined center that can be claimed as "the heart and soul of Glenmont." Tr. June 29 at 226. Mr. Iraola stated that the Sector Plan provides a rational land use policy to implement a new center for Glenmont, focused near Metro, while still maintaining the integrity of surrounding residential neighborhoods.

Mr. Iraola agreed with Mr. Gang's description of the surrounding area. He described the design concept for the site is organized around two primary features: the "neighborhood main street" running roughly parallel to Glenallan Avenue, and the major central green space. The main internal street, which Mr. Iraola referred to as the "spine street," ties the entire community together, and provides additional vehicular and pedestrian connectivity to the surrounding streets. The green space, he suggested, provides a new community focal point for both site residents and members of the larger community.

Mr. Iraola cited five design principles that were applied: (i) pedestrian-oriented streets, including comfortable sidewalks and activating uses along them, all focusing towards Metro; (ii) mixed use buildings; (iii) a variety of open space components, some as private courtyards within a building, but most as public open spaces; (iv) connectivity, meaning multiple ways for vehicles and pedestrians to circulate through the community and no dead-end streets; and focal points such as parks, plazas, special buildings or framed views. Tr. June 29 at 230-232. Mr. Iraola contrasted this with the fenced

development on the site now, which is not conducive to people walking through and “engaging the community as a place.”

Mr. Iraola agreed with Mr. Gang’s assessment of how the proposed Development Plan complies with the recommendations of the Sector Plan. See Tr. June 29 at 233. He also agreed that the subject applications comply with the standards of the TS-R Zone. See *id.* at 243.

Turning to the issue of compatibility, Mr. Iraola stated that the primary land use would be a mix of residential buildings. He noted that the site is surrounded, at least on the east, by similar uses in the form of condominiums and apartments, making the proposal very compatible. Retail uses would be concentrated on the west of the site, closer to Georgia Avenue and Metro, and would serve the entire community, not just the new development. Mr. Iraola stated that all buildings would front onto streets or public open spaces, as specified in the Binding Development Principles. He noted that building height would be lower along Layhill Road, and taller moving away from it. Mr. Iraola stated that the buildings along Georgia Avenue would be enhanced by a boulevard treatment that would make this development more compatible with Georgia West neighborhood to the west. Mr. Iraola described the proposed development as very compatible with the surrounding neighborhood, and providing needed retail for the convenience of Glenmont residents. See *id.* at 243.

When asked about the “we/they” concern voiced by some community members, Mr. Iraola opined that this development would be an integral part of the larger community. He envisions people in the community walking through this site, which they cannot do now because of the fencing. He envisions people using the open spaces, whereas right now, there is really no public space within Glenmont “that people can kind of wrap their arms around and say, this is mine.” Tr. June 29 at 244. Mr. Iraola suggested that new retail always energizes a community, and would do that here for the whole Glenmont community. He also thinks that if this development succeeds in obtaining the LEED Neighborhood Design designation it will be one of the first in the country, and people will be coming to Glenmont to find out why it’s so special from an environmental standpoint. Mr. Iraola described the proposed development as being “visionary,” and “designed for the future.” Tr. June 29 at 236.

Mr. Iraola presented an illustrative plan showing what the development plan would look like if the townhouses and multi-family on Blocks E and F were switched, as suggested by Technical Staff. See *id.* at 237-38. He explained that Staff wanted to have more density along Glenallan Avenue to make a stronger statement as it relates to Metro across the street. Mr. Iraola confirmed that the alternative would fit within the same development blocks, and building height limits would be the same. He noted that if townhouses are built on Block F, they likely will not reach the 65-foot height limit. That limit would apply more to multi-family buildings at that location. Mr. Iraola opined that either alternative would be compatible with the surrounding community.

Mr. Iraola opined that the Binding Design Principals on the development help further compatibility, and also give MNCPPC some guidance moving toward site plan. Based on his experience working at MNCPPC, he believes this element would be welcome. He also believes this element gives the Council some qualitative guidance that is flexible, yet specific enough to be understandable.

Finally, Mr. Iraola opined that granting the subject applications would be in the public interest. Mr. Iraola sees this project as a catalyst for all of Glenmont Center, and a way to maximize the public investment in transit by concentrating a diverse mix of residential and retail uses at a transit station. Mr. Iraola cited the subtitle of the Sector Plan, “The Completion of the Red Line Marks a New Beginning for Glenmont,” and described this development as part of that new beginning. See *id.* at 246.

Under cross-examination by the People’s Counsel, Mr. Iraola estimated that the existing Metro garage across Glenallan Avenue from the subject site, with four levels, is at least 44 feet tall. When asked whether building a 65-foot-tall building across the street would create a “cavern of cement” along Glenallan Avenue, Mr. Iraola opined that instead, it would define the street. He based this conclusion on the width of the street and the proposed setback along Glenallan Avenue, which he believes would be in proportion with the size of the buildings. Mr. Iraola conceded that there is probably no other location within the Glenmont planning area where there is currently a 65-foot building across the street from a 45-foot building.

Mr. Gang offered his own response to Mr. Klauber's questions in a written submission. See Ex. 101. He offered a nearby example of a tall building close to shorter buildings: the nine-story building at the Winexburg apartment complex, which is approximately 350 feet long, with just one minor break in the façade, and is surrounded by three-story buildings. Mr. Gang described the Metro garage across the street as four covered stories plus parking on the roof, with a total height of about 49 feet. He noted that the western part of the garage, closest to Glenallan Avenue, has only two covered stories, as shown in the photograph on page 17 of this report. Mr. Gang pointed out a large stand of trees along Glenallan Avenue, a 20-foot change in grade along the northern face of the garage, and setbacks from Glenallan of 85 feet at the closest point and 200 feet at the farthest point. He concludes that due to the drop in grade, setbacks and trees, the impact of the garage on the proposed development would be negligible. See Ex. 101.

When asked whether 35 to 45-foot townhouses or a 65-foot multi-family building at the corner of Layhill Road and Glenallan Avenue would be more compatible, Mr. Iraola opined that they would be equally compatible. In response to questions from community member Max Bronstein, Mr. Iraola stated with even with multi-family at that corner, they can still avoid a straight, formidable line of buildings by using a U-shaped building with a small green space.

In response to question from community member Michael McAteer, Mr. Iraola stated that people walking from the new residences to Metro, across Glenallan Avenue, would follow the sidewalk and cross either at the intersection with Layhill Road or at the garage entrance. He reluctantly agreed that Layhill Road and Glenallan Avenue can be a dangerous intersection, depending on the time of day. Mr. Iraola did not specifically respond to Mr. McAteer's statement that he has seen cars run into trees about six times in the space of 15 months, because they are going too fast along the curve of Glenallan Avenue.

Mr. McAteer contends that people in the neighborhood are not going to want to come into this new development because the new residents will have much higher incomes, and there will be a real discrepancy, so they will have nothing to communicate about. Mr. Iraola stated that people don't feel welcome now because of the fencing, but that the new development would be inviting. It

would be lined with comfortable, shaded streets with that have sidewalks. There would be (assuming county approval) cars parallel parked along the road, sheltering pedestrians from the travel lanes. Mr. Iraola described these as qualitative features that would make this development comfortable and inviting. He also suggested that people might interact with regard to the environmental education element of the open space, and on the playgrounds that he expects would be part of the development.

8. Christopher Schein, landscape architect. Tr. July 16 at 60-127.

Mr. Schein was designated an expert in landscape architecture. He is with the same firm as Mr. Iraola, and testified that his firm worked with Mr. Gang's firm on the land plan design, is responsible for the landscape architectural design for the project and prepared many of the exhibits.

Mr. Schein testified that one of the primary elements influencing the landscape architecture is the neighborhood context – perimeter streets and adjacent neighborhoods. Other site characteristics that influenced the design are the topography, the stream valley buffer and the proximity of Metro.

Mr. Schein described the environmental buffer and its mature trees as central to the plan's organization. The land plan has been built around this natural resource and amenity by creating a large, central open space. The plan provides for a very strong open space with pedestrian connection throughout the site.

Turning to compatibility with Glenallan Avenue, Mr. Schein described the roadway as a wide open street with fast traffic, which cars are going through to get somewhere else. Currently, the buildings are set back, very few if any entrances face Glenallan Avenue and the property is fenced off, so there is very little public open space. See *id.* at 69-70. It is also very quiet, with little activity at the street front. The Applicant, Mr. Schein explained, would like to create a different character for Glenallan Avenue one that is friendlier towards the community and that people will want to drive on to get to Metro or to any of the public amenities on this site. See *id.* at 68. Mr. Schein opined that retail uses and residential buildings with entrances on the street would have a calming effect on traffic along Glenallan by providing more interest along the street, and more to look at in terms of buildings, open

spaces, people and activities. He opined that the effect will be a Glenallan Avenue that is more compatible with the neighborhood, where people will feel comfortable walking. See *id.* Hopefully, he added, the Applicant will be able to provide a direct, mid-block crossing from the central open space in the center of Glenallan Avenue to the Metro.

Mr. Schein opined that the proposed development would also make Georgia Avenue more compatible with the neighborhood by installing a wide, comfortable sidewalk and landscaping. Together, improvements on Georgia and Glenallan would enhance the public streetscape along the perimeter of the site and improve the neighborhood.

The Hearing Examiner asked Mr. Schein to explain a term used on the development plan, which states that the Applicant anticipates “articulation of buildings along the street edge.” Tr. July 16 at 75. Mr. Schein explained that this means the facades are nicely detailed, like the front of a building, rather than having blank walls like the back of a building. A well-articulated building has doors, windows and architectural details that contribute to the streetscape in a positive way. See *id.* at 76. It may also have varying setbacks, or jogs in the building, which break up the massing of a large building.

Mr. Schein testified that the development team took the Sector Plan’s landscape recommendations very much to heart, including the neighborhood main street character, recommendations to enhance Georgia Avenue, and providing pedestrian-friendly, tree-lined streets. The Sector Plan also calls for a large, central public open space, which is a primary feature of the proposed plan. This space, Mr. Schein stated, is organized roughly along a line from Glenallan Avenue to the environmental buffer area, responding to the surrounding buildings and land uses. See Tr. July 16 at 80. Along Glenallan would be an organized plaza or café terrace, and active place for people to gather. Moving into the site, there would be a grid of trees, and the area would start to be more of a park. This would transition to a large, open lawn in the center of the space, which would be attractive to look at and also provide a flexible space for a variety of activities, from spontaneous recreation to program space for community activities. Benches and movable seating would be provided around this space. At the bottom of this space would be some gardens with paving, lighting

and site furniture. The last component would be a bio-filtration area to capture rainwater, which hopefully could be used to irrigate the gardens and lawns. After the gardens, the neighborhood main street would cut through the open space. On the other side of that road would be the environmental buffer, bordered with a boardwalk, pavilions and gardens using native plants. This is intended to have an educational component, such as signage explaining how water is used on the site and what makes it a green, more sustainable neighborhood.

Mr. Schein described additional open spaces shown on the Development Plan. *See id.* at 79-80. These include courtyards of varying sizes and shapes on Blocks F, G and H, designed to be more intimate and residentially scaled. Between F and H a medium-sized park is shown, which would be public and appropriate for larger gatherings. These would all connect to one another and the large, central open spaces through the interconnected sidewalk and street system. Mr. Schein stated that these spaces would be available to people in the surrounding neighborhood, promoting compatibility. *See id.* at 87.

Mr. Schein opined that the proposed development would be consistent with the goals of the Sector Plan, would be compatible with existing and proposed adjacent land uses, and would be in the public interest. He stressed that the proposed development would make better use of an underutilized piece of property and the “incredible public resource of this mass transit center,” making Glenmont a vibrant landmark. He opined that the proposed development would tend to preserve the natural features of the site where practicable, particularly in the environmental buffer area. Finally, he stated that “this is exactly the type of development that should be on this property.” Tr. July 16 at 90.

Under cross-examination by Mr. Klauber, Mr. Schein acknowledged that the development team had not consulted with representatives of the existing community before designing the central open space, but stated that there should be plenty of opportunity to do that, because what has been prepared is just a concept plan. When asked where the closest existing residence is to the subject site, Mr. Schein said the closest may be on the west side of Georgia Avenue, but he considers Georgia Avenue to be a significant physical barrier. On the east side of Georgia Avenue, the closest residence would be at the corner of Layhill Road and Glenallan Avenue. Someone coming to the

central open space on the subject site from that residential neighborhood could walk through the new neighborhood main street, or could walk down Glenallan Avenue, which would have a sidewalk separated from the road by a tree panel. To get to the environmental buffer overlook area, one would walk through the central open space and cross the neighborhood main street, like crossing at any intersection in a neighborhood.

In response to questions from Mr. Bronstein, Mr. Schein elaborated on the traffic calming effect he described on Glenallan Avenue. He explained that currently, people drive through Glenallan Avenue, as fast as they can, to get somewhere else. With the proposed development, he expects that for a lot of people driving down Glenallan Avenue the subject site will be their destination. This will make them slow down, looking for their turn, which will make other cars slow down. When asked by Mr. McAteer whether Glenallan Avenue is a dangerous road to cross on foot, Mr. Schein reluctantly agreed that traffic moves quickly and it is “not a very comfortable, safe street to cross at the moment.” Tr. July 16 at 107-108.

Mr. McAteer also asked what would be the architectural tie for the proposed development, the thing that draws one’s eye, like a church steeple or a big clock, and ties it into the community. Mr. Schein stated that the whole development would be open and very public and welcoming, like any urban area. Mr. Schein finds that if people are walking along a street of buildings that are pleasant to walk next to, with windows and doors, when they get to an intersection that is very open and welcoming, and the streetscape turns and invites them in, they will turn into that street.

When Mr. McAteer asked how residents of the proposed development would participate in the life of Glenmont, Mr. Schein suggested they might go to a nearby park, and that hopefully this development would spur other redevelopment that would create additional retail destinations in Glenmont. He also voiced that hope that residents of the new development would meet people in the community, particularly among families with children, and go to visit them in their homes.

9. Craig Hedberg, transportation planner. Tr. July 16 at 128-257; July 24 at 12-128.

Mr. Hedberg was designated an expert in transportation planning and traffic engineering. He first described the roadways surrounding the subject property. Glenallan Avenue is a five-lane arterial, with four lanes going west from Layhill Road to Georgia Avenue, divided at the intersection into through, left-turn and right-turn lanes, and one lane going east from Georgia Avenue to Layhill Road. Layhill Road is a major arterial, median divided, and Georgia Avenue is a major highway, median divided.

Mr. Hedberg described the current access points to the site from all three roads, and the access points shown on the proposed Development Plan. The latter include one access point on Georgia Avenue, farther east than the current Georgia Avenue entrance, which Mr. Hedberg expects would be restricted to right-in/right-out movements. The proposed plan shows four entrances along Glenallan Avenue, three onto internal streets and one into a parking garage. Two access points are proposed along Layhill Road, which would have to be right-in/right-out because the road is divided by a median. The neighborhood main street shown roughly parallel to Glenallan Avenue, within the proposed development, would intersect the driveway entrances coming in off the major roads, which “allows for some balancing to relieve any particular points of congestion, should there be any,” and would provide more efficient movement through the site both for site residents and for community members coming the site to go to the food store, for example.

Mr. Hedberg stated that the Applicant would like to improve pedestrian circulation to the Metro station by installing a pedestrian signal along Glenallan Avenue, but that requires a study to show that the number of pedestrian crossings warrants having a signal, when there are already traffic signals at both ends of the block. Mr. Hedberg noted that the normal distance between traffic lights is 750 feet for State-run roadways, and the normal intersection spacing between public roads under county standards is 600 feet. He estimated the length of Glenallan between Georgia and Layhill at about 1,300 feet. Thus, a mid-block signal would be about 600 to 650 feet from each end of the block. Mr. Hedberg suggested this will require a great deal of discussion going forward, because safe pedestrian access across Glenallan Avenue is extremely important. He thinks the most likely location

to gain approval is where the central open space is shown, right across from the Metro station park and ride entrance and exit.

Mr. Hedberg's firm prepared the original traffic study for the present applications in October 2006, and an update in April 2007. The studies were based on the LATR Guidelines and the scope dictated by Transportation Planning Staff at the MNCPPC. The scope for both stages combined covered 17 intersections. For Stage 1 alone, the scope covered nine intersections.

Mr. Hedberg's firm conducted traffic counts where no current traffic data was available, and found that all the intersections studied operate within the applicable CLV volume under existing conditions. Under background conditions, i.e., adding in traffic anticipated from developments that have been approved but not yet built, all intersections met the applicable congestion standards except the intersection of Randolph Road and Georgia Avenue. Both the Stage 1 level of development and the combined Stage 1/Stage 2 development would worsen congestion levels at the Randolph Road/Georgia Avenue intersection.

Mr. Hedberg then turned to examining the improvements necessary to offset the impact of site traffic and bring the CLV below the 1,800 standard. See Tr. July 16 at 136. He utilized two physical roadway improvements that were identified in the Sector Plan as alternatives to a grade separation: constructing an additional through/right turn lane southbound on Georgia Avenue, and constructing a separate right turn lane from northbound Georgia Avenue to eastbound Randolph Road. Mr. Hedberg's analysis indicates that those improvements would result in the intersection operating within the CLV congestion standard. These are the same improvements that the Planning Board endorsed in its approval of the Indian Springs subdivision case.

Mr. Hedberg noted that the SGA and Technical Staff would prefer to have the Applicant contribute to the cost of the grade-separated interchange, but the at-grade improvements would also satisfy LATR. In Mr. Hedberg's assessment, the funds the County has already spent on right-of-way acquisition and utility relocation indicate the "interest and the momentum to get the interchange built." Tr. July 16 at 138. He believes funding could be allocated for construction of the grade-separated interchange as early as Fiscal Year 2009, and that the interchange is reasonably probable of fruition.

Mr. Hedberg stated that a publicly funded improvement may be considered “programmed” when all the construction funds are allocated within the next four-year period. *Id.* at 139-40. Until then, it may not be relied upon under LATR. Mr. Hedberg believes that the issue of the grade-separated interchange will be resolved before Stage 1 of the proposed development is completed (which Mr. Roberts estimated to be 2013 or 2014), assuming it goes forward. *See id.* at 180-81. Mr. Hedberg opined that the proposed at-grade improvements are feasible, noting that they were considered in multiple hearings during the Indian Springs case and were found feasible at that time. He noted that the at-grade improvements would be the sole responsibility of this Applicant if neither the grade-separated interchange nor the Indian Springs subdivision were to go forward.

Mr. Hedberg confirmed that during the Planning Board’s consideration of the present applications, the Board suggested that the Applicant consider non-roadway improvements that would enhance the pedestrian transit infrastructure, helping to mitigate traffic impact in ways other than just building additional road capacity. Examples of such improvements include pedestrian countdown signals, real-time transit information signs, bicycle lockers, sidewalks and enhancements to pedestrian connections. Mr. Hedberg described the trip credits available for such improvements under LATR. One possibility the Applicant was very interested in is a neighborhood shuttle, which would bring people from the surrounding neighborhood to the Metro station. Mr. Hedberg has never actually implemented a circulator shuttle in his 30 years as a traffic planner, but he estimates that a good neighborhood shuttle could bring about 15 riders per hour to the station. *See id.* at 142, 171. This would not reduce the expected trip generation for the proposed development, but it would take trips off the roads, reducing congestion at the local intersections that site traffic would use. Mr. Hedberg estimates that a good neighborhood shuttle would support approval of an additional 35 dwelling units on top of the 220 to 300 units whose approval could be based on trip credits. Replacement units would not require any traffic mitigation measures, because they are not considered to generate additional traffic, so that would cover the 275 replacement units anticipated in Stage 1. Obviously no traffic mitigation is required for the 77 units expected to remain in the Stage 2 portion of the site if only Stage 1 goes forward. Thus, Mr. Hedberg calculates that the Applicant may be able to

get approval for between 607 and 687 dwelling units (275 replacement units, 77 existing units to remain, and 255 to 335 new units) based on non-roadway improvements and transit mitigation measures. *See id.* at 143. This would not cover all of Stage 1, so roadway improvements would still be necessary. *See id.* at 157-58. Moreover, the trip credits would not allow the Applicant to satisfy its obligations by building only one of the at-grade improvements, because one affects the morning peak hour and the other affects the evening peak hour. What the Applicant would gain from pursuing non-roadway improvements is the ability to move forward with Stage 1 sooner, while waiting for the grade-separated interchange to be funded. The subdivision approval would include a phasing plan to specify how many units can be built immediately, based on non-roadway improvements, and how many will require the grade-separated interchange or at-grade roadway improvements. *See id.* at 167-68. It might also include a performance standard requiring the developer to demonstrate, for example, that the neighborhood shuttle is actually taking trips off the road at the rate anticipated, before building permits can be released. *See id.* at 169-70.

Mr. Hedberg emphasized that these calculations are preliminary, because the Applicant would be required to perform a new traffic study at the time of subdivision. The Applicant would work with Staff and the Planning Board on roadway and non-roadway improvements to satisfy its traffic mitigation requirement. *See id.* at 144. If the grade-separated interchange has been funded at the time of subdivision review, it is possible that the Planning Board could require contribution to the cost of the interchange to support Phase 1. *See id.* at 169. The calculations in the submitted traffic study do not include any trip credits for non-roadway improvements. They assume that all traffic mitigation would be done in the form of roadway improvements. *See id.* at 150. The reason to discuss non-roadway improvements at this stage, Mr. Hedberg explained, is to point out (i) how much development can potentially take place before a decision is made to fund the grade-separated interchange; and (ii) that the Planning Board is directing the Applicant to do as much as possible with transit improvements.

The Hearing Examiner asked Mr. Hedberg about the meaning of the reference to transit improvements in Textual Binding Element No. 4, which states that no building permit

applications will be submitted for Stage 2 until a grade-separated interchange is fully funded, or other “transit or transportation improvements are under construction” that would make the intersection of Georgia Avenue and Randolph Road function at an acceptable level. He replied that the kind of transit improvement that could make the intersection function at an acceptable level would be something really major, like the transit way that has long been discussed for Georgia Avenue. He also opined that this textual binding element covers the intent of the Sector Plan with regard to the timing of Phase 2.

Mr. Hedberg testified that because of its location in a Metro policy area, the proposed development is eligible for the “alternative review” procedure under the growth policy, instead of complying with LATR. See *id.* at 175-76. Applicant’s counsel interjected that the Applicant currently does not intend to pursue the alternative review procedure, but plans to make a final decision at subdivision. When asked how a developer decides whether to use the alternative review procedure, Mr. Hedberg stated that it may be more expensive because the impact fee is higher, and the trip reduction goals require reducing trips by 50 percent, which can be difficult to achieve. See *id.* at 177-78.

Mr. Hedberg opined that the proposed development would not have an adverse impact on the surrounding area from the standpoint of traffic, that the proposed site access and circulation would be safe, adequate and efficient, that the development would satisfy the Sector Plan’s transportation goals, and that because of Textual Binding Element No. 4, public facilities would be adequate to support the proposed development. See Tr. July 16 at 198-201. He also opined that the proposed rezonings would be in the public interest because they would create a strong pedestrian environment and make best use of accessibility to Metro.

In response to questions from the Hearing Examiner, Mr. Hedberg acknowledged that traffic moves very quickly on Glenallan Avenue, but opined that the higher levels of activity with the proposed development would have a calming effect on traffic. See *id.* at 203-204. In his view, when there are people walking on the sidewalks and uses like a cafe, they tend to attract people’s attention, so people are less focused on going straight ahead as fast as possible.

Mr. Hedberg noted his agreement with the SHA that a grade-separated interchange at Randolph Road and Georgia Avenue would result in a better traffic condition than the at-grade improvements the Applicant has offered to make if the interchange is not built. See *id.* at 205. He stated that the interchange would remove the conflict between the two roads for through traffic. Conflicts would remain for turning vehicles, but they would be moved to on and off ramps. Mr. Hedberg was unable to describe what the interchange would look like, although he explained that the grade of Georgia Avenue likely would not change, i.e., Georgia Avenue would not be raised, it would be a matter of digging under it for Randolph Road. He noted that at least on the west side, Randolph Road sits at a fairly low elevation and rises to meet the grade of Georgia Avenue. On the east side of the intersection Randolph Road is flatter, so Mr. Hedberg acknowledged that the transition back up to grade will take longer. In response to a question from the People's Counsel, Mr. Hedberg noted that this interchange would not give the same visual image as the grade-separated interchanges that have been built along Route 29, because all of those rise up over Route 29, rather than going under. See *id.* at 212-13.

The People's Counsel questioned Mr. Hedberg about the nature of Glenallan Avenue and how it is currently used. Mr. Hedberg testified that in the morning there is heavy westbound traffic going to the Metro, but the largest amount of traffic queuing is at Glenallan's intersection with Layhill Road, where traffic coming from Georgia Avenue waits to turn. He acknowledged that the speed limit on Glenallan is 30 miles per hour, but not many people follow it. He reiterated that the proposed development would hopefully slow down traffic on Glenallan, and conceded that if this made Glenallan less desirable for cut-through traffic, the logical place for such traffic to go would be through the intersection of Georgia Avenue and Randolph Road. See *id.* at 217. He conceded that this potential increase in traffic through an already overburdened intersection was not considered in his traffic study or by the Planning Board, and found it difficult to assess the potential magnitude of such an impact.

Mr. Bronstein asked Mr. Hedberg why the Mid-County Community Recreation Center, a 32,000 square foot facility with meeting space, sports facilities a work-out room, is estimated in the submitted traffic study to generate only two trips during the morning peak hour. Mr. Hedberg offered

no substantive explanation, but stated that the trip generation numbers he used came from the traffic study that was prepared when the Recreation Center was approved. See *id.* at 219-220. He added that he would not have questioned that figure, despite his three decades of experience, if the figure was given to him by Technical Staff from the traffic study for an approved development.

Mr. Bronstein also asked about the width of the lanes that would be added to Georgia Avenue with the grade-level improvements, and whether the widening would result in making existing lanes narrower. Mr. Hedberg replied that the existing lanes “certainly wouldn’t be diminished below that the State would deem . . . acceptable.” *Id.* at 225. He considers it likely that part of the Glenmont Greenway park would be acquired to add to the right-of-way. Mr. Hedberg was unable to say how far back in each direction additional right-of-way would be needed because the improvements have not been designed yet. He did state that an early plan for the new interchange went back to about Layhill Road, so that probably would be the maximum distance. *Id.* at 277.

According to Mr. Hedberg, a developer must make its best efforts to acquire necessary right-of-way from the property owner, but if the developer is not successful, the government can use its authority to acquire the land. Mr. Hedberg acknowledged that if an additional through lane is added on Georgia Avenue, the roadway on the far side of the intersection will have to be wide enough to receive four lanes of traffic, then transition down to three lanes. The length of transition lanes varies, he explained, depending on the traffic speeds and volume and whether there are constraints on right-of-way acquisition. Mr. Hedberg noted that there is an ideal distance, but that is not always achieved.

Community member Vicki Vergagni questioned Mr. Hedberg about how a resident of her development, Glen Waye Gardens, which is in the southeast corner of Layhill Road and Glenallan Avenue, would get home after grocery shopping at the subject site. Mr. Hedberg explained that she could take a left turn out of the parking garage or one of the site driveways onto Glenallan Avenue. He acknowledged that she would have to cross two lanes of westbound traffic, and potentially wait in the center turn lane to merge into the eastbound lanes head toward the intersection of Glenallan and Layhill. Someone coming to the site from Glenmont Forest, an apartment complex at the intersection

on Randolph Road and Georgia Avenue, could take a right out of the new development onto Glenallan, then a left onto Georgia Avenue. He conceded that it might be difficult to make that left turn if traffic is backed up on Georgia and not moving. See *id.* at 237.

Mr. Hedberg was not familiar with how long the wait is for people exiting the Metro parking garage and trying to turn left onto Glenallan Avenue. When asked whether vehicles exiting the subject site would make it more complicated or extend the waiting time for people exiting the Metro garage, Mr. Hedberg replied that the whole intersection would be looked at much more closely during site plan review to avoid causing a back-up problem. See *id.* at 238.

Mr. Hedberg acknowledged that he did not collect data or make observations about accident rates, nor did he measure the speed of vehicles on Glenallan. His study did observe what kind of traffic movements vehicles make in the area, and indicated that most of the cars entering Glenallan Avenue at its intersection with Layhill Road are coming straight across the intersection, rather than making a right or left turn. [Note: This would be consistent with cars cutting through Glenallan Avenue from Randolph Road to get to Georgia Avenue.] That is particularly the case, he added, during the morning peak period. In the afternoon peak period there are more left turns.

Ms. Vergagni asked whether the parking the Applicant proposes on Glenallan Avenue would come out of the existing lanes or the Applicant's land. Mr. Hedberg replied that the plan is to permit parking without adding any more pavement to the road. This would require county approval, and would depend on the projected volume. He suggested that parking might be permitted only during certain hours, as is the case in many parts of the County. See *id.* at 245.

Michael McAteer asked Mr. Hedberg how many lanes Georgia Avenue will have if the grade-separated interchange is built. Mr. Hedberg replied that based on the plans he has seen, there would be three southbound lanes going straight through, two left turn lanes and one right-turn lane. Northbound there would be just three lanes going straight through. The total, therefore, would be nine lanes. See *id.* at 249. Randolph Road would have two lanes in each direction plus a ramp on each side for turns, for a total of six lanes. See *id.* at 249-51. When Mr. McAteer asked whether Mr. Hedberg thought it was good for a community to have an intersection with so many lanes going

through the heart of the community, Mr. Hedberg replied, "I think that there are multiple issues that are trying to be addressed, and congestion is one of them." *Id.* at 252. He added that one of the goals would be to make it as pedestrian-friendly as possible, and questioned what the impact is on the community of the current levels of congestion.

Turning to Glenallan Avenue, Mr. McAteer asked Mr. Hedberg whether the neighborhood main street shown on the Development Plan in a curving alignment, and as a private road, would satisfy the Sector Plan's goal for that road of relieving some of the traffic on Glenallan Avenue. Mr. Hedberg stated that it would relieve traffic on Glenallan that is generated by the proposed development. He confirmed that in the alignment shown, the road would not qualify as a public road.

Mr. Hedberg was questioned extensively by community member Richard Kauffunger, who first asked why an average of four different traffic counts was used for the Georgia Avenue/Randolph Road intersection. See Tr. July 24 at 45. Mr. Hedberg explained that counts had been done in connection with the Indian Springs subdivision case and another development, plus the Applicant in this case did two sets of counts (the first one became too old and they had to redo it, see *id.* at 79-80). The earliest of the counts, for the Indian Springs case, was taken in September 2005. The other three were done in February 2006, November 2006 and January 2007. There was a significant difference in the counts, which ranged from 6,073 to 7,887 in the morning peak hour and from 6,330 to 7,793 in the evening peak hour. See *id.* at 47. For the evening counts, the difference between the smallest and the largest was 23 percent. Mr. Hedberg stated that the counts he did were lower than the Indian Springs counts, and Technical Staff decided that the most appropriate thing was to take an average of the four counts. Staff also mentioned that at the time of subdivision, they may do their own counts.

Mr. Hedberg was unable to estimate how much the CLVs would be different if they had used the highest of the four traffic counts, instead of an average. Figuring that out would require assigning the trips to the roadway network and performing calculations that he could not do during the hearing. See *id.* at 50.

Mr. Kauffunger asked Mr. Hedberg what maximum CLV congestion standard the SHA uses. Mr. Hedberg stated that in Montgomery County, they follow the County's standards. He acknowledged that the State has its own standard and uses different calculation assumptions, but stated that he is not sure what their standard is.

When asked why the County had increased the congestion standard from 1,600 to 1,800 for Metro station policy areas, Mr. Hedberg explained that in Metro areas there is a wider range of transportation options, including both the Metro and a high concentration of bus services. See *id.* at 51-52. He acknowledged that Technical Staff can also require additional tests in Metro areas to get at operational issues such as traffic queues, and can request queuing analysis when there is no feasible physical improvement that would mitigate a traffic impact. He noted that Technical Staff did not ask the Applicant to perform such additional analysis in this case, because physical improvements were identified that would bring CLV down below the congestion standard. Mr. Hedberg has never been involved in a case when Staff required a queuing analysis.

Mr. Kauffunger asked Mr. Hedberg to explain a table on page 10 of the traffic study, which shows a breakdown of southbound traffic on Layhill Road. This part of his testimony is discussed in Part III.F.

Mr. Kauffunger then turned to the right-of-way that would be necessary for the at-grade improvements that the Applicant has proposed in the event the grade-separation is not built. Mr. Hedberg stated that the land needed for the additional southbound lane on the west side of Georgia Avenue is a park, so it is "under County ownership," which could mean the County or MNCPPC. Taking that land for right-of-way, he stated, would have to be worked out with MNCPPC, recognizing that these improvements are identified in the Sector Plan and this same piece of land would be needed for right-of-way in connection with the grade-separated interchange. Mr. Hedberg maintained that taking park land for a roadway is not unprecedented, and that MNCPPC has reviewed these roadway improvements and found them to be feasible. Mr. Hedberg does not know what type of mitigation is required with the taking of parkland.

When Mr. Kauffunger asked about the length of the fourth lane transitioning down to three lanes on the south side of the intersection, Mr. Hedberg termed that a “design detail that would have to be worked out with” the SHA. *Id.* at 69. He added that again, that land would be necessary for the grade-separated interchange, as well. He expects that the transitioning could occur by “the end of the ballpark school property,” a former school property that is also County-owned. *Id.* at 72.

Mr. Kauffunger asked whether the need to transition down from four southbound lanes to three would remove some of the benefits of the improvements by creating new conflicts and congestion in the merging process. Mr. Hedberg replied that the merge would be done in a safe manner, and is not an uncommon situation. *See id.* at 72-73. He feels that the real congestion point is the intersection, and these improvements would get the traffic through the intersection. He believes that the merge would be done over a sufficient distance to make it safe, although he conceded that there might be some delays. *See id.* at 74.

Mr. Kauffunger then asked Mr. Hedberg what lane widths the SHA requires for a six-lane divided highway. Mr. Hedberg stated that a typical lane is 12 feet wide, although depending on the circumstances, the State will narrow that down. He noted that 11-foot lanes are not uncommon, but they are reluctant to approve anything narrower than 11 feet. He stated that AASHTO, the American Association of State Highway Transportation Officials, also recommends 12-foot lanes. Mr. Hedberg testified that he is not sure what the lane widths are at Georgia Avenue and Randolph Road, but he would expect them to be between 11 and 12 feet. He also does not know the width of the existing right-of-way for Georgia Avenue, so he cannot say how much additional width would be necessary for the proposed at-grade improvements.

Mr. Hedberg insisted that if the Applicant were unable to purchase the necessary right-of-way, he believes the County or the State would step in and exercise its power of eminent domain to acquire that property. He conceded, however, that he has never been involved in a case where the State has taken such action.

Mr. Hedberg obviously is aware that the proposed widening of northbound Georgia Avenue was proposed as part of the traffic mitigation in the Indian Springs case. He testified that he

was not aware that the same improvement was required as part of the approval of the Tivoli Lakes community, but the roadway improvement was never built. See *id.* at 79. [The Applicant's written rebuttal notes that the Tivoli Lakes community was approved and built 23 years ago, so Mr. Hedberg may be forgiven for not remembering it. The files indicate that the subdivision approval was conditioned on widening Georgia Avenue, but with the proviso that the condition could be waived if it could not be achieved.]

Mr. Hedberg visited the Georgia Avenue/Randolph Road intersection many times outside the peak hours, and two or three times during peak hours. He acknowledged that he observed traffic back-ups there during the peak hours, more on some occasions than on others. The worst back-up he recalls seeing on Georgia Avenue was approaching the Layhill Road intersection, which he estimated to be a distance of about 800 feet. See *id.* at 82-84.

Mr. Kauffunger asked Mr. Hedberg whether he is aware of any shortcomings in the CLV technique prescribed under LATR. Mr. Hedberg replied that CLV only measures conflicting movements that go through intersections. If there is something preventing the flow of traffic through an intersection, for example an accident, the CLV count will be relatively low. See *id.* at 85. Mr. Hedberg stated that the main advantage of CLV analysis to Montgomery County is that it is understandable, at least to a degree, to laypeople, whereas some other methods could be a lot more complicated. Mr. Hedberg acknowledged that heavy congestion could impede traffic flow to a degree that would prevent cars from flowing through the intersection and therefore depress the CLV count, but he noted that in most cases, it is the theoretical background traffic that causes intersections to fail CLV analysis, not actual traffic. See *id.* at 85-86. Mr. Hedberg also observed that the congestion standards in the various policy areas are based on the Council's judgment.

Mr. Kauffunger asked whether there are any special problems associated with CLV methodology when there is a series of close, congested intersections. Mr. Hedberg stated that it depends a lot on signal coordination. If the signals are not timed carefully, you can end up with back-ups between intersections.

Mr. Hedberg opined that taking an average of the four traffic counts available for Randolph and Georgia was a good way to proceed, recognizing that an update will be prepared at the preliminary plan stage. He opined that the proposed at-grade road improvements to Georgia Avenue are feasible, although the sole basis for this opinion appears to be that the County and the State concluded in the Indian Springs case that they are feasible. See *id.* at 109-110. Mr. Hedberg opined that the at-grade improvements are reasonably probable of fruition in the foreseeable future because the Applicant has committed to making them before proceeding with Stage 2. He also noted that MNCPPC has endorsed these improvements in its review of the present applications and the Indian Springs case. He believes that all of the land necessary for right-of-way acquisition will be available because it is in public ownership: the Glenmont Greenway on the west side of Georgia Avenue for the new southbound lane, a school ball field south of Randolph for the transition lane, and the existing fire station property on the east side of Georgia for the new northbound turn lane. See *id.* at 110-111.

Mr. Hedberg stated that it is common, in preparing a traffic study, to use data from an earlier study that was prepared in connection with a development that has been approved but not yet built. See *id.* at 124. Technical Staff identifies the background developments to be considered, and often provides the trip assignments right out of the studies that were done for those developments.

Mr. Hedberg noted that the 15 percent reduction in expected trip generation for the proposed development based on its proximity to Metro was established by Technical Staff. Mr. Hedberg considers that a conservative estimate, and he believes that more than 15 percent of the residents in the proposed development will use Metro, given the proximity.

Regarding the use of CLV methodology, Mr. Hedberg stated that CLV is accepted by the County and the State as a means of measuring traffic congestion, and has been used in Montgomery County since he started working in the County in the 1980s. He added that in this case, Technical Staff focused on the ultimate development of both stages, and agreed with Mr. Hedberg's conclusions.

B. Testimony by Community Members

Some community members spoke in direct opposition to the proposed development. Other raised concerns or asked questions. Community participation is summarized in some detail in Part III.H and more briefly here.

1. Sergio Santucci. Tr. June 26 at 61-73.

Mr. Santucci resides on Randolph Road in Silver Spring. The main concerns he expressed at the hearing were the extension of Denley Road and making extra parking spaces available for public parking. He also provided written comments summarized in Part III H. See Ex. 87.

2. Susan Lois Johnson, Tr. June 29 at 203-209.

Ms. Johnson resides on Teaberry Road very close to the subject property and has lived in Glenmont since 1987. She voiced two primary concerns: traffic mitigation, and community culture and lifestyle. She noted that the intersection of Georgia Avenue and Randolph Road is failing, and opined that the grade-separated intersection at Georgia Avenue and Randolph Road is necessary to make Stage 2 of this development work. With regard to the culture of Glenmont, Ms. Johnson is concerned about the building heights and setbacks, and would like to see more workforce-level affordable units than the County requires. She does not want to see any buyouts of MPDUs. Ms. Johnson argues that the proposed density should be reduced to preserve quality of life for residents of the new community and the surrounding area.

Finally, Ms. Johnson strongly recommends that if this rezoning proceeds, the O-M parcel should be included as part of the overall zoning, as it would contribute to the overall appearance and scope of the development.

3. Brian King, local business owner. Tr. July 24 at 90-94.

Mr. King spoke on behalf of his father, who runs the gas station at the corner of Georgia Avenue and Randolph Road, which would be razed for the grade-separated interchange. Mr. King believes that people will not be able to get around Glenmont very well if the interchange is built,

and that if the development proposed here is built, it will create even more traffic. He argues that building the interchange and the proposed development would make the area very hectic.

4. Ellis Moore, Georgia Avenue Baptist Church. Tr. July 24 at 95-102.

Reverend Moore is the pastor at the Georgia Avenue Baptist Church, across from the subject site at the corner of Georgia Avenue and Glenallan Avenue. He stated that the church's main concern is the sense of community in the area. He would not like to see the church towered over and the sense of community washed away by tall buildings along Glenallan Avenue. Reverend Moore suggested that Glenallan Avenue would not be a safe place to have gathering spots for people, because cars do sometimes run off the road.

5. Vicki Vergagni, Glen Way Gardens Condominium Association.

Ms. Vergagni testified in general support of the proposed development, but expressed concern that as currently proposed, the population density would be too high for the suburban character of Glenmont. She stated that the new homes would be too expensive for existing Glenmont residents, creating resentment. Ms. Vergagni is also concerned about the new development worsening both safety problems on Glenallan Avenue, which experiences very high traffic speeds, and heavy congestion at the Randolph Road/Georgia Avenue intersection. Unlike other community participants, Ms. Vergagni would like to see more parking on site, to prevent overflow parking in other neighborhoods.

6. Max Bronstein, Strathmore Bel-Pre Civic Association. Tr. July 24 at 163-204.

Mr. Bronstein opposes the present applications for many reasons. He believes that Sector Plan compliance is not enough to support a proposal that is not in the public interest. He argues that the air pollution that would be caused by traffic from the proposed development is an adverse effect that should be addressed. Mr. Bronstein is concerned about the mature trees on the site. He contends that a way must be found to preserve the existing trees, and that all the required forest planting should be done on site. Mr. Bronstein is concerned that the tall, high-density buildings proposed here, one right next to the other, would be incompatible with the suburban density and low-scale buildings in the neighborhood.

Mr. Bronstein alleged several deficiencies in the traffic study, including failure to include traffic increases on Georgia Avenue connected to the future opening of the ICC, decisions not to carry certain local traffic through the Georgia Avenue/Randolph Road intersection, and excluding two developments in nearby Aspen Hill in background traffic.

Mr. Bronstein maintains that the CLV methodology prescribed for LATR is inadequate to assess congestion at intersections where the number of cars that can get through is depressed by the very congestion the study seeks to measure. He supports the grade-separated interchange and opposes the proposed at-grade improvements, partly because he believes they would reduce the momentum to build the grade separation.

7. Michael McAteer, Glenmont Civic Association. Tr. July 24 at 204-237, 243-257.

Mr. McAteer served on the Glenmont Sector Plan Committee between 1994 and 1997, but he disagrees with some of its recommendations, particularly the grade-separated interchange.

Mr. McAteer raised three major concerns about the proposed development: traffic congestion; new residents with very high incomes by Glenmont standards, leading to resentment; and that the new development would physically dominate the community along Georgia Avenue, Glenallan Avenue and Layhill Road.

Mr. McAteer argues that Glenmont's traffic problems should be solved by providing better transit options, including a Georgia Avenue Busway, light rail along Randolph Road and shuttle buses. He contends that widening Georgia Avenue or building a grade-separated interchange would both have negative impacts on how Glenmont looks and feels as a community, and on the already poor pedestrian circulation.

Mr. McAteer supported high-density uses for the subject site during preparation of the Sector Plan, but that was because he thought the residents would use Metro. With over 2,000 parking spaces, he finds the density counterproductive, arguing that Glenmont needs less traffic, not more.

Mr. McAteer maintains that expensive homes will draw residents who will not fit in or be a part of the Glenmont community, where neighbors share common interest and become friends. He

also contends that seven-story buildings would tower over the rest of Glenmont rather than becoming part of it. The only aspect of the proposed development that Mr. McAteer appears to favor is the retail component. He believes the retail could help connect the new development with the larger Glenmont community, and that high-end retail would be an asset.

Mr. McAteer expressed deep frustration at the County's failure to implement the Sector Plan's vision for Glenmont of a walkable, transit-oriented community. This would require improving pedestrian circulation and safety in Glenmont, which "wants to be a city. . . [a]nd the road people keep coming in and paving everything." See Tr. July 24 at 236.

8. Richard Kauffunger. Tr. July 24 at 253-315.

Mr. Kauffunger's principal concern is traffic congestion. He believes that CLV analysis is inadequate to assess conditions at a congested intersection like Georgia Avenue and Randolph Road, and that the proposed at-grade improvements would not prevent the proposed development from having an adverse impact on local traffic conditions. Mr. Kauffunger advocates delaying the proposed development until the grade-separated interchange at Georgia Avenue and Randolph Road is under construction.

C. Applicant's Rebuttal

The Applicant did not offer rebuttal testimony, but did submit a closing statement rebutting the testimony of Mssrs. Kauffunger, McAteer and Bronstein, as well as a series of documents related to the Indian Springs subdivision case that are intended to rebut Mr. Kauffunger's testimony. See Closing Statement and Rebuttal, Ex. 142; Ex. 123. Each component of the rebuttal is summarized below, although elements that have been incorporated into other sections of this report are mentioned here only briefly.

1. Indian Springs Documents

The Indian Springs documents submitted on rebuttal consist of excerpts from the Planning Board's opinion approving the subdivision; excerpts from the Planning Board's hearing on the application; a document entitled "Staff Response to Planning Board questions raised at the 9/7/06

Indian Spring hearing,” which apparently was prepared between hearing days in that matter; email correspondence between an SHA official and MNCPPC staff; and excerpts from a letter that the Indian Springs developer submitted to the Planning Board to rebut evidence presented during the hearing. See Ex. 123.

The hearing excerpts from the Indian Springs subdivision case include testimony from the developer’s traffic expert stating that the LATR Guidelines were followed, and that Mr. Kauffunger’s objections to CLV methodology are irrelevant, because it’s what the County has used for 30 years. See Ex. 123, transcript at 206. The excerpts also contain testimony from Mr. Kauffunger quoting the Staff Report’s conclusion that the at-grade improvements are not feasible due to right-of-way constraints and park impacts, and testimony from Mr. Payne stating that the Staff Report was incorrect, and “the turning lanes would be accommodated in the right-of-way that would be needed for the grade separation.” See *id.*, transcript at 312. Mr. Payne explained that he understands the State’s position to be that the District Engineer would construct the at-grade improvements with funds from the developer, and would go through the same right-of-way acquisition that they would need to go through for the grade separation. See *id.*, transcript at 313. One way or another, therefore, the parkland would be lost. See *id.*

2. Richard Kauffunger Testimony

Mr. Kauffunger questioned Mr. Hedberg about the sudden drop in southbound traffic on Layhill Road between Glenallan Avenue and Georgia Avenue; the Applicant’s traffic study shows 175 trips southbound on Layhill at Glenallan, but only 26 trips make it to the intersection with Georgia Avenue. Mr. Hedberg first stated that this was probably due to traffic entering the existing Metro garage, which has an entrance on Layhill Road between Glenallan Avenue and Georgia, but later stated that it must relate to the second Metro garage, which is planned for the west side of Georgia Avenue and is included in background traffic.

The Applicant’s rebuttal states that the traffic study prepared for the new Metro garage contemplates that it would be used by southbound Georgia Avenue traffic and would free up spaces in the existing Metro garage, to be used by vehicles traveling south on Layhill Road. See *id.* at 39-40.

Although the Applicant does not take the analysis any farther, this suggests that freeing up spaces in the existing garage is expected to increase Layhill Road traffic to the garage such that a very large percentage of southbound traffic on Layhill Road will head into the Metro garage, rather than continuing on to the intersection of Georgia Avenue and Layhill Road, or the intersection of Georgia Avenue and Randolph Road. It would have been helpful to see some kind of substantiation that this high percentage of traffic going into the garage is consistent with reality. Mr. Hedberg offered none, simply stating that the numbers came from an earlier study for an approved project, and he did not question them.

The Applicant's rebuttal notes Mr. Kauffunger's argument that the at-grade road improvements proposed in the traffic study are not feasible, despite what the Applicant considers to be overwhelming evidence that they are feasible from the Applicant, Technical Staff, the Planning Board and the SHA. *See id.* at 40. The Applicant asserts, in particular, that Mr. Kauffunger's argument about land that would be needed for right-of-way on the west side of Georgia Avenue being unavailable due to a Memorandum of Understanding between WMATA and MNCPPC is unfounded. The Applicant states that the memorandum in question envisions a land swap that would give the County, and thereafter MNCPPC, ownership of the property in exchange for certain County-owned property that is already part of a WMATA facility. Thus, the property will remain in public ownership. *See id.* at 40-41. Moreover, the Applicant maintains that both the grade-separated interchange and the at-grade improvements would involve similar right-of-way impacts along Georgia Avenue. The Applicant suggests that Mr. Kauffunger's attempt to discredit Mr. Hedberg and MNCPPC by focusing on details such as lane widths or agency memorandum "tends to trivialize the authority of elected officials and decision-makers to implement public policies." *See id.*

The Applicant points out that Mr. Kauffunger cited Technical Staff's statement in the Indian Springs staff report that the at-grade improvement in question would not be feasible, without volunteering the information that Technical Staff stated explicitly at the Planning Board's hearing on the Indian Springs subdivision that the Staff Report was incorrect. *See id.* at 43-44. Mr. Kauffunger tried to explain this lapse by stating that he considered Technical Staff's change of position at the

public hearing to be a sham. Nonetheless, the Hearing Examiner finds that in fairness, Mr. Kauffunger would have done better to have explained that there was a change in position that he found unpersuasive.

The Applicant's rebuttal includes the letter cited earlier from the author of the Indian Springs traffic study, refuting contentions that his report suggested the proposed at-grade improvements were not feasible.

The Applicant contends that it has amply demonstrated that the proposed transportation improvements at Georgia Avenue and Randolph Road will address the traffic impacts of the proposed development, and that at preliminary plan and site plan review, the Planning Board will ensure that the development's transportation impacts are adequately addressed. *See id.* at 46. The Applicant further asserts that court rulings suggest that the assurance of subsequent transportation capacity reviews is sufficient to satisfy the applicable test, namely that the improvements proposed are reasonably probable of fruition in the foreseeable future. *See id.*

The Applicant does not specify what court rulings it contemplates. *See id.* The only case cited in this part of the rebuttal is *Montgomery County v. Greater Colesville Citizens Association*, 70 Md. App. 374 (1987), in which the court held that the existence of post-zoning controls that require construction of roadway improvements before construction of a proposed development may begin is a valid factor to consider in determining whether improvements are reasonably probable of fruition, because such controls make improvements that are reasonably probable of fruition become "reasonably certain of fruition." 70 Md. App. at 389. The *Colesville* decision certainly supports the proposition that the assurance of subsequent transportation reviews may validly be considered in assessing whether proposed improvements are reasonably probable of fruition, but it does not mandate the outcome of such an assessment.

The Applicant reiterates that the proposed at-grade improvements are feasible, noting that the same improvements were reviewed and approved by the Planning Board, Technical Staff, the Montgomery County Department of Public Works and Transportation and the SHA in connection with the Indian Springs case. The Applicant further argues that the grade-separated interchange is highly

likely to be constructed in the foreseeable future – it has been designed and partially funded for right-of-way acquisition and utility relocation, and is the County’s highest-ranked State road project. The Applicant argues that these factors would support a finding that the grade separation passes the rezoning test, if not for the more restrictive language in the LATR Guidelines, which prohibits reliance on a public transportation project unless it has been fully funded for construction. *See id.* at 47.

Turning to Mr. Kauffunger’s testimony regarding the space needed to merge the fourth southbound lane on Georgia Avenue into the lanes on the south side of the intersection, the Applicant states that the fourth lane could be carried through the intersection and merged into the existing three lanes before reaching the limits of the public right-of-way of a former school on Georgia Avenue at Mason Street (this is consistent with Mr. Hedberg’s testimony). The Applicant notes that the additional lane would carry both right-turning vehicles and through traffic, so only some of the traffic in that lane would be through traffic. The Applicant argues that the amount of through traffic would be able to merge safely from four to three lanes, at a sufficient distance from Randolph Road so as not to impede traffic flow through the intersection. *See id.* at 47-48.

Mr. Kauffunger also referred to the approval for the Tivoli Lakes project, which was conditioned on the construction of a northbound right-turn lane on Georgia Avenue at Randolph that was never built. The Applicant argues that Mr. Hedberg’s credibility should not be discredited because he was unaware of a conditional of approval for a preliminary plan that was approved 23 years ago. *See id.* at 48. In a post-hearing review of that approval, the Applicant found that the condition requiring the northbound right-turn lane could be waived if its implementation would cause “undo delay” to the residential project, and the developer appears to have satisfied its obligations by making a pro rata payment for the cost of that improvement. *See id.*

The Applicant emphasizes that the County and the State are focused on implementing the grade-separated interchange, the right-of-way needed for the two types of improvements is similar, and the fire house that has made the additional right-turn lane difficult to achieve is expected to be moved to a new site.

The Applicant rejects Mr. Kauffunger's contention that the Applicant should have undertaken a queuing analysis in this case. See *id.* at 51. Mr. Hedberg testified, and a post-hearing email from Transportation Planning Staff confirms, that it is MNCPPC's position that queuing analysis is not relevant and will not be required if improvements have been identified that will allow CLV to pass the congestion test. See *id.*; Attachment 3 to Ex. 142. A queuing analysis is required under the LATR Guidelines only if no improvements are available or desirable that would satisfy the CLV test. See *id.* In such a case, a project still may go forward if it passes a queuing analysis. [Note: The queuing test specified in the LATR Guidelines is that the average queue length in the weekday peak hour should not extend more than 80 percent of the distance to an adjacent signalized intersection, provided the adjacent signalized intersections are greater than 300 feet apart, or 90 percent if the intersections are closer together than 300 feet. See LATR Guidelines at 21.]

The Applicant stresses that it complied with the requirements of LATR, and that Mr. Kauffunger's arguments about the shortcomings of the CLV technique prescribed under the LATR Guidelines "is a policy argument that has no relevance to these proceedings." *Id.* at 51.

Mr. Kauffunger argued that the proposed development should be delayed until the grade-separated interchange is fully funded and construction is underway. See Tr. July 24 at 295-97. This, the Applicant contends, is contrary to the Sector Plan's staging recommendations, which provide that Stage 1 – up to 500 new dwelling units and 200 jobs – should proceed immediately to begin the redevelopment of the Glenmont Center. See Ex. 142 at 53. The Sector Plan recommended delaying only Stage 2 to wait for a solution to congestion at Georgia Avenue and Randolph Road.

3. Michael McAteer Testimony

One of Mr. McAteer's main themes was that the congestion at the intersection of Randolph Road and Georgia Avenue should be relieved through transit improvements rather than widening Georgia Avenue or building a grade-separated interchange. He believes that widening Georgia Avenue would make the situation for pedestrians even worse than it currently is, reducing the chances of achieving the Sector Plan's vision of a walkable Glenmont Center, and that the grade-separated interchange would destroy the visual center of Glenmont. The Applicant agrees that transit

improvements are important and should be considered, but contends that these improvements would not likely substitute for roadway improvements. Moreover, the grade-separated interchange was a high priority for the State and the County long before the present rezoning applications were filed.

The Applicant maintains that Mr. McAteer's concerns about pedestrian circulation in Glenmont are linked not only to the present applications but to insufficient action by the County. Mr. McAteer acknowledged on cross-examination that pedestrian circulation problems in Glenmont are a long-standing issue that is predominantly the County's responsibility. See Ex. 142 at 56-57.

Mr. McAteer several times drew the inference that because the anticipated traffic generation was reduced by only 15 percent due to proximity to Metro, this means that only 15 percent of the new residents are expected to use Metro. The Applicant argues that the 15 percent reduction was prescribed by Technical Staff and represents a conservative estimate. The Applicant's traffic expert expects a higher level of Metro ridership than 15 percent. See Ex. 142 at 57.

Another of Mr. McAteer's concerns is a clash between the existing Glenmont community and higher-income residents who would be drawn to new development and its higher-priced dwellings. Mr. McAteer doesn't see any connection between the proposed development and the existing community except the proposed retail, which he agreed could create a synergy with existing Glenmont. The Applicant concludes that Mr. McAteer's concern about culture clash can be addressed through proper design efforts, open and inviting uses and spaces and community coordination. See *id.* at 59.

The Applicant also addressed Mr. McAteer's concerns about building height compatibility, emphasizing the agreed-upon height limits and stating that, as JBG representative Mr. Roberts testified, it is unlikely that all of the Development Blocks would be developed at the maximum heights. See Ex. 142 at 59.

4. Max Bronstein Testimony

The Applicant disagrees with Mr. Bronstein's assertion that there is an overemphasis on the Sector Plan's recommendations, as well as his suggestion, without any supporting rationale, and that the maximum density on the property should be 900 to 1,000 units. The Applicant argues

that Mr. Bronstein's contention that infrastructure should be in place before any development is permitted is unreasonable, and is not supported by the County's growth policy, laws, rules and regulations. The Applicant observes that this contention is also counter to the Sector Plan's recommendation that the first 500 new units and up to 200 jobs on the subject site should be developed immediately, without waiting for a solution to the problems at Randolph Road and Georgia Avenue.

Mr. Bronstein argued that cutting down 91 of the 114 significant and specimen trees on the site would be a "major disturbance to the current natural habitat." See Tr. July 24 at 168. The Applicant calls this characterization unjustified, noting that Mr. Bronstein's photographs of trees on the site did not identify the locations, nor did he point out that some of the trees in the photographs would be preserved under the Preliminary Forest Conservation Plan. See Ex. 142 at 63. The Applicant states that Mr. Bronstein failed to acknowledge the significant environmental benefit of removing structures and impervious surface from the environmental buffer in the north corner of the site and planting additional trees, which two environmental experts testified would be beneficial to the stream fragment that runs through the site. The Applicant also notes that Environmental Planning staff at the MNCPPC found the Preliminary Forest Conservation Plan acceptable.

The Applicant countered Mr. Bronstein's arguments that the proposed development would be incompatible with the surrounding community by pointing to extensive expert testimony about compatibility. The Applicant acknowledges that the proposed Glenmont Metrocenter would change Glenmont, but argues that this is exactly the change the District Council envisioned when it approved the Sector Plan.

Mr. Bronstein also questioned why the traffic study did not include an expansion of the Aspen Hill shopping center as part of background development. The simple answer is that Technical Staff did not require it due to distance.

Mr. Bronstein briefly raised school capacity, arguing that there is nothing in the CIP that would lessen the current overcrowding at the elementary level. The Applicant points to earlier evidence demonstrating that all clusters have passed the Growth Policy test with regard to school

capacity, and a letter from MCPS stating that the next CIP is likely to include a programmed improvement that would alleviate the elementary school crowding in the Downcounty Consortium.

D. People's Counsel

The People's Counsel, Martin Klauber, participated in the questioning of witnesses and offered a closing statement, see Tr. July 24 at 237-242. In his closing statement, Mr. Klauber pointed out various elements of the Sector Plan for special consideration. Page 1, third paragraph; page 6, box in grey; page 30, entire page on Glenmont Metrocentre; page 55 on Glenallan Avenue; page 82-D, staging element; page 81, zoning section. Mr. Klauber notes that the TS-R Zone references the Sector Plan, making it more than a set of guidelines under Maryland judicial decisions.

Mr. Klauber noted that some of the community members gave a feel for the character of Glenmont in their testimony. The basic question, Mr. Klauber said, is how the proposed development plan fits into existing Glenmont. He queried whether, as some of the community members stated, retail and a café are not such a good idea on Glenallan Avenue because the speed of the traffic and the curve of the road raise safety issue. Perhaps it would be better to have a main street running up through the middle of the development – maybe that would make people want to come into the development.

Mr. Klauber cited the enormous amount of testimony about the drivability of the intersection of Georgia Avenue and Randolph Road, and the challenge of making people want to cross it on foot. He argued that there is no description of any pedestrian safety improvements in the record of this case that the Applicant can commit to, and nothing at all at Georgia Avenue and Randolph Road.

Mr. Klauber referred to the testimony of several community members concerned about whether the new development, if approved, would have townhouses or multi-family homes at the corner of Layhill Road and Glenallan Avenue. He views townhouses as necessary at that location to preserve a minimum of compatibility, and promised to participate in the site plan and subdivision reviews if this goes forward.

Mr. Klauber believes, with Mr. McAteer, that a “good connection” between the proposed development and existing Glenmont is necessary, and could be better than what has been proposed. He believes the central open space could be improved and made more inviting to the public. In closing, he stated that the Office of the People’s Counsel wishes to be neither in support of nor in opposition to these applications.

V. ZONING ISSUES

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height.

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, i.e., it satisfies the purpose and regulations of the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

The TS-R Zone is among the floating zones that provide for design specifications as part of a development plan. An applicant is afforded considerable design flexibility if development standards for the zone are satisfied. In exchange for that flexibility, development under the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. See Code §59-D-1.11. If approved, the development plan will provide basic design parameters for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. Normally, a development plan is expected to contain sufficient precision to fix the land use, height, density and bulk of the proposed development, which are

basic components of compatibility, and to provide design specifications that govern post-zoning reviews. In the TS-R Zone, building height is specifically reserved for determination during site plan review. A development plan may set maximum building heights, to give the Council enough information to assess compatibility, but final height determinations are made by the Planning Board. See Code §59-C-8.51.

Because the development plan establishes the fixed elements of the application, evaluation of zoning issues will begin with the development plan and proceed to the requirements of the zone itself.

A. The Development Plan

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Code, together with the Hearing Examiner's analysis.

- (a) ***That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies. However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a development plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if . . . [not relevant].***

As set forth in detail in Part III.E above, the Planning Board, Technical Staff and the Applicant's expert land planners found that the TS-R Zone and the proposed development would be in substantial compliance with the use and density indicated in the Sector Plan.

After a careful review of all of the evidence pertaining to the Sector Plan, as detailed in Part III.E above, the Hearing Examiner concludes that the submitted Development Plan would substantially comply with the use and density indicated by the Sector Plan. The proposed

development would not carry out all facets of the Sector Plan's recommendations – for example, the neighborhood main street is unlikely to relieve traffic on Glenallan Avenue because of its meandering design, the Development Plan does not guarantee that taller buildings would be at the rear of the site, farther from existing homes, and the retail uses are proposed on Glenallan Avenue instead of Georgia Avenue. Nonetheless, the proposed development would largely satisfy the Sector Plan's specific goals for the subject site, including the maximum recommended density, and would promote many of its broader objectives for the Glenmont Center.

The Sector Plan specifically recommended that the subject site (with the exception of the half-acre portion currently zoned O-M, which is discussed below) be rezoned to TS-R to accommodate a variety of residential uses, possibly including high-rises up to ten stories and convenience retail. The recommended base density was 42 dwelling units per acre, which, as the Sector Plan noted, results in a maximum of 51 units per acre with an MPDU bonus. The Sector Plan recommended a new street within the subject site, parallel to Glenallan Avenue, to help the new development be part of the Glenmont Center rather than a separate neighborhood. The plan calls for tree-lined streets, street-oriented buildings with ground-level commercial uses, direct connection to Metro and a central open space. The development currently proposed would carry out these recommendations. Overall density would be just under 51 units per acre with both stages, assuming that enough MPDUs are provided to obtain the bonus. The development would have a variety of housing types, including townhouses, low-rise and mid-rise multi-family buildings with a variety of unit sizes, multi-family over retail and possibly live/work units. Stage 1 would include a small amount of convenience retail and Stage 2 would have a larger retail component. The Binding Design Principles on the Development Plan provide for tree-lined streets, ground-level retail, a central open space and multiple direct connections to Metro.

The more subjective element of being part of the Glenmont community is harder to judge at the zoning stage because it would depend on a host of details to be determined at a later stage, like the architecture, the shapes of the buildings, the width of the spaces between and in front of the buildings, the character of the streetscape and the configuration of the open spaces. Nonetheless,

the Applicant has endeavored to craft the Textual Binding Elements and Binding Design Principles to demonstrate an intention to make this development part of the larger community. In the Hearing Examiner's view, it has succeeded as well as may possibly be expected at this early stage in the planning process.

The Development Plan also provides for compliance with the Sector Plan's phasing recommendations, through a Textual Binding Element that links Stage 2 tightly to the accomplishment of improvements at the intersection of Randolph Road and Georgia Avenue. The traffic study did not adequately demonstrate an absence of adverse traffic impacts for either stage of the development, but there is no question that the Development Plan provides for strict compliance with the phasing envisioned in the Sector Plan. The Hearing Examiner sees no reason that the Sector Plan's recommendation to proceed "immediately" with Stage 1 should trump the need to demonstrate that the development would not have adverse traffic impacts.

Almost all of the subject site was specifically recommended for mixed-use, high-density development under the TS-R Zone. The half-acre area currently zoned O-M was not recommended for a change in zoning or use, probably because it was separately owned, was occupied by a going concern and was not expected to be available for redevelopment. However, the drafters of the Sector Plan had the foresight to include the O-M portion of the site in the area they called the "Glenmont Center," which was later designated as a transit station development area. Redevelopment as part of the proposed mixed-use, transit-oriented development is consistent with that designation. Moreover, a finding of "substantial" compliance with the Sector Plan leaves room to exercise judgment in finding that including this small, but visually prominent parcel in the larger redevelopment would help implement the Sector Plan's vision and intent more fully.

As discussed in detail in Part III.E. above, the submitted Development Plan would promote many of the Sector Plan's more general goals and recommendations, in which the Glenmont Center plays a large role. The proposed development would help carry out – and with some luck, might even jump start – the implementation of the Sector Plan's vision for a compact, transit-oriented Center for Glenmont, with higher density to make best use of the County's substantial investment in

the Glenmont Metro Station. It would provide gathering places for Glenmont residences in its public open spaces and retail spaces. It would have an interconnected, pedestrian-friendly street network to encourage walking and transit use. It would contribute streetscaping and street activation to Georgia Avenue. It would have at least the potential to benefit the health of the stream fragment that runs through the site and onto Metro property, contributing to the health of the watershed.

For all of the above reasons and based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed Development Plan would be in substantial compliance with the recommendations and goals of the Sector Plan, including the recommended use and density for the subject property.

There is no evidence to suggest that the proposed development would be inconsistent with the General Plan or the Capital Improvement Program. Other county policies that may be considered include the Growth Policy, which governs the implementation of the County's Adequate Public Facilities Ordinance. As discussed in detail in Part III.F.1., the Hearing Examiner finds that although the Applicant has submitted an LATR traffic study that Technical Staff found acceptable, it has failed to demonstrate sufficiently that the proposed development would not have an adverse impact on traffic conditions in the surrounding neighborhood.

The proposed development would only partially promote the element of the County's housing policy that calls for more affordable housing – this development would result in a net decrease in affordable housing units in Glenmont, because it would replace an older, low-rent apartment complex of 352 units with a more upscale, higher density development including between 12.5 and 14.5 percent MPDUs, i.e., a maximum of 225 affordable units. The proposed development would, however, be a significant step in furthering the element of the County's housing policy that advocates more and higher density housing in close proximity to Metro, to promote a transit-oriented lifestyle and take best advantage of the County's investment in transit. It would also promote the element of the County's housing policy that calls for a range of dwelling types to accommodate the needs of a variety of households. This development would increase the proportion of townhouses and multi-family dwellings in Glenmont, and would offer a variety of unit sizes and prices. Moreover, many of the

existing units are vacant, suggesting that they are either not highly desirable or not in livable condition, and the testimony suggests that one way or another, the existing development on the subject property is likely to change. Whether through a substantial renovation or the replacement proposed in these zoning cases, the prices are certain to go up, and the number of affordable units to go down.

The Hearing Examiner concludes that the proposed development does not conflict with any county plans or policies, except as noted regarding traffic impact.

- (b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.***

1. Intent and Purposes of the Zone

The TS-R and TS-M Zones are intended to be used as follows, per Section 59-C-8.21:

- (a) The TS-R and TS-M zones are intended to be used in a Transit Station Development Area as defined in section 59-A-2.1. However, the TS-R zone may also be used in an area adjacent to a Central Business District, within 1,500 feet of a metro transit station, and the TS-M zone may be also be used within a Central Business District if the property immediately adjoins another property outside a Central Business District that is eligible for classification in the TS-M zone or separated only by a public right-of-way from property outside a Central Business District that is eligible for classification in the TS-M zone.
- (b) The TS-R zone is intended for locations where multiple-family residential development already exists or where such development is recommended by an approved and adopted master plan.
- (c) The TS-M zone is intended. . . [not relevant]
- (d) In order to facilitate and encourage innovative and creative design and the development of the most compatible and desirable pattern of land uses, some of the specific restrictions which regulate, in some other zoning categories, the height, bulk and arrangement of buildings and location of the various land uses are eliminated and the requirement substituted that all development be in accordance with a plan of development meeting the requirements of this division.

The entire subject property is located within a transit station development area designated in the Sector Plan. In addition, 30.5 of the 30.9 acres on the site are developed with multi-

family apartment buildings, and more multi-family developments are located across Layhill Road from the site. Thus, the application of the TS-R Zone to the subject property would be consistent with the intent of the zone.

The purpose clause for the TS-R Zone, found in Code §59-C-8.22, is set forth in full below, with relevant analysis and conclusions following:

- (a) To promote the effective use of the transit station development areas and access thereto;
- (b) To provide residential uses and certain compatible non-residential uses within walking distance of the transit stations;
- (c) To provide a range of densities that will afford planning choices to match the diverse characteristics of the several transit station development areas within the county; and
- (d) To provide the maximum amount of freedom possible in the design of buildings and their grouping and layout within the areas classified in this zone; to stimulate the coordinated, harmonious and systematic development of the area within the zone, the area surrounding the zone and the regional district as a whole; to prevent detrimental effects to the use or development of adjacent properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and to promote the health, safety, morals and welfare of the present and future inhabitants of the regional district and the county as a whole.

The evidence amply demonstrates that the proposed development would make effective use of the Glenmont transit station development area by increasing the amount and type of housing opportunities in close proximity to the Glenmont Metro. The entire development would be within easy walking distance of the Metro, most within a five-minute walk and all within a ten-minute walk. See Ex. 62(n). The site layout as shown on the Development Plan provides direct pedestrian routes to the Metro station from all parts of the site. The Development Plan also provides for ground floor retail uses that would be compatible with the new development and beneficial to Metro commuters and the surrounding community. The residential density proposed in these applications is consistent with the recommendations of the Sector Plan, and would represent a new housing choice in Glenmont, more urban and transit-oriented in character than the existing suburban densities.

Paragraph (d) of the purpose clause sets forth a purpose to “stimulate the coordinated, harmonious and systematic development of the area” and “prevent detrimental effects to the use or development of adjacent properties or the surrounding neighborhood.” These elements effectively make compatibility of the rezoning with the surrounding area an element of the purpose clause. Accordingly, compatibility will be discussed at this juncture.

With the exception of traffic impacts, the Hearing Examiner agrees with Mr. Gang that the proposed development would be compatible with the surrounding area, in terms of both the uses and the physical structures. The primary land use would be a mix of townhouses and multi-family residential buildings. The closest existing residences are similar uses, in the form of condominiums and apartments, making the proposal very compatible. Retail uses would be concentrated on the west side of the site, closer to Georgia Avenue, and would be beneficial for the entire Glenmont community. Adverse impacts are unlikely between the Metro station and the proposed development, given the urban setting, the intervening width of the road right-of-way and setbacks, and existing and planned landscaping. The proposed development may also be expected to have the positive effects for Metro of increasing ridership and providing convenient, nearby retail for Metro commuters. Moreover, in the planned urban setting, with the setbacks and landscaping, the Metro property The church on the corner of Glenallan Avenue and Georgia likewise might gain additional parishioners, with a higher population density on the site. Churches are often found in both residential neighborhoods and commercial areas, suggesting that the mix of uses proposed in these cases would be compatible with the church and its activities. The rest of the surrounding area is separated from the subject site by major roadways and the Metro station property, so the impact of the proposed uses and associated activity levels would be attenuated.

The building types proposed for the subject site also would be compatible with the surrounding area. While the nearby apartment and condominium complexes primarily have low-rise buildings with two and a half or three stories, they are separated from the subject site by the 120-foot right-of-way of Layhill Road, in addition to a change in grade. The closest dwellings, in the Winexburg community, are screened from both the road and the subject site by significant landscaping.

Photographic evidence suggests that with the possible exception of the steeple, the church is significantly lower than the maximum height of 85 feet proposed on the Development Plan. However, , the church is separated from the site by the right-of-way of Glenallan Avenue, and would be further separated from the closest buildings by a minimum building setbacks of 25 feet from the curb. See Development Block Analysis (Binding), Ex. 144(a). The visual impact of the new buildings also would be softened by proposed streetscaping. For residential and other uses farther removed from the subject property, the proposed development would be an appropriate transition from the Metro entrance and garage to the Red Line terminus and the Metro train yard.

Several community members argued that the proposed development would not be compatible with the surrounding area because it would introduce new elements to Glenmont: taller buildings, structures built closer together in a more urban form, higher population density and more expensive housing. These elements are precisely what the Sector Plan recommended, in an effort to revitalize an area that has seen little re-investment in recent decades, and to take full advantage of the substantial public investment in the Metro station. With higher density homes close to Metro, more people can adopt a transit-oriented lifestyle that is less dependent on the automobile, which has long been one of the County's primary goals for Metro station areas. Admittedly this represents a change for Glenmont, but this change is driven by a policy decision that the County Council and the Planning Board made when the Sector Plan was approved and adopted. Moreover, with the height limits that community representatives succeeded in negotiating with the Applicant and the extensive Textual Binding Elements and Binding Design Principles, the record provides a high level of assurance that the final plan for the subject site will, if the project goes forward, be an asset for the existing community as well as new residents. Diversity in housing prices and income levels likely would strengthen Glenmont over the long-term, and the evidence suggests that the realities of the market would likely lead to dwellings that are more expensive than the average Glenmont home, but nothing approaching the stratospheric prices in, for example, downtown Bethesda. With the minimum setbacks specified and the roadways separating the site from other residences, even 85-foot buildings are unlikely to "loom" over existing residences. They are more likely to form an agreeable skyline. With a commitment to

two major public open spaces and several minor ones, plus five-foot sidewalks and street trees through the site, the proposed development is unlikely to give the appearance of an unbroken wall of buildings that some community members fear. Finally, the retail component of the plan is likely to contribute to a vibrant new Center for Glenmont with attractive, convenient shopping and dining options and spaces for people to gather and interact.

There is no evidence that the existing development on the subject site, surrounded by fencing, contributes in any significant way to the sense of community in Glenmont. The development this Applicant has proposed has the potential to make a significant contribution along those lines because of the open space and retail components. In the Hearing Examiner's view, because the development is separated from existing residential neighborhoods by major roads and Metro facilities, it is unlikely to detract from the sense of community that Glenmont's residents are fortunate enough to have created.

For all of these reasons and based on the preponderance of the evidence, the Hearing Examiner concludes that with the exception of traffic impacts, which are discussed separately, the proposed development would be compatible with the surrounding area and would satisfy the purpose clause for the TS-R Zone.

2. Standards and Regulations of the Zone

The standards and regulations of the TS-R Zone are summarized below, together with the grounds for the Hearing Examiner's conclusion that the proposed development would satisfy each of these requirements.

Section 59-C-8.24, Location. This section repeats Section 59-C-8.21(a), which is discussed in Part V.A.(b)1. above.

Section 59-C-8.25, Public facilities and amenities.

A development must conform to the facilities and amenities recommended by the approved and adopted master or sector plan, including and granting such easements or making such dedications to the public as may be shown thereon or are deemed necessary by the Planning Board to provide for safe and efficient circulation, adequate public open space and recreation, and insure compatibility of the

development with the surrounding area, and assure the ability of the area to accommodate the uses proposed by the application.

The Development Plan provides for all of the facilities and amenities called for in the Sector Plan. The open spaces, pedestrian-friendly streets and streetscaping are assured by binding elements. The internal street parallel to Glenallan Avenue is provided for, although its meandering design – appropriate for a development that stresses pedestrian-friendly streets – is unlikely to relieve traffic pressures on Glenallan Avenue. Moreover, the road right-of-way dedications called for in the Sector Plan are specifically shown on the Development Plan, and the Planning Board would have discretion at site plan to require additional amenities as needed.

Section 59-C-8.3 Land use. No use is allowed except as indicated in the following use table . . .

All of the uses proposed on the Development Plan are permitted as of right in the TS-R Zone.

Section 59-C-8.4 Development standards.

As shown in the table below, excerpted from the Staff Report with slight modification, the proposed development would be consistent with the development standards of the TS-R Zone.

TS-R Zone Development Standards, Code § 59-C-8.4

Development Standards	Permitted/ Required	Proposed
Minimum tract area (area to be rezoned)	18,000 sq. ft.	30.9 acres
Maximum density of dwelling units per acre		
a. Floor area ratio	2.5, or 3,365,000 sq. ft.	Not to exceed 2,500,000*
b. Dwelling units per acre	150 du/acre	Not to exceed 50.1 du/acre*
Open space		
a. Minimum percentage of net area devoted to public use space	10%	Not less than 10%
b. Minimum percentage of net lot area devoted to active and passive recreation space.	25%	Not less than 25%.
c. Total minimum open space	35%	Not less than 35%

* Denotes binding elements.

In addition to the provisions cited above, the TS-R Zone includes the following special requirements:

Section 59-C-8.51, Building height limit.

The maximum height permitted for any building shall be determined in the process of site plan review. In approving height limits the planning board shall take into consideration the size of the lot or parcel, the relationship of the building or buildings to surrounding uses, the need to preserve light and air for the residents of the development and residents of surrounding properties and any other factors relevant to height of the building.

No findings necessary at zoning.

Section 59-C-8.52, Off-street parking. Parking shall be so located as to have a minimal impact on any adjoining residential properties.

The Textual Binding Elements specify that all parking will be in parking garages/decks, in driveways or on streets (parallel spaces). This would avoid the large expanses of parking lots common to multi-family communities.

Section 59-C-8.52, Streets. Interior streets may be private or public but private streets must have a minimum width of 20 feet for two-way traffic and 10 feet for one-way traffic and must be paved and maintained in good repair.

The Textual Binding Elements specify that all streets will meet Montgomery County standards for emergency access, which comport with the requirements of the Zone.

Section 59-C-8.54, Ancillary commercial uses. Ancillary commercial uses, as a permitted use or by special exception as set forth in section 59-C-8.3, may be permitted as follows:

- (a) The amount of floor area devoted to commercial uses cannot exceed the amount or substantially alter the configuration specified for the site in the applicable master or sector plan.
- (b) If the master or sector plan does not make a specific recommendation as to the amount of floor area allowed, then commercial uses are limited to the street level only.

In addition, a restaurant may be permitted on the top or penthouse floor. All commercial uses must be so located and constructed to protect tenants of the building from noise, traffic, odors and interference with privacy.

The proposed commercial uses would be below the maximum FAR specified in the Sector Plan, and would conform to the ground-level retail the plan recommends.

3. Maximum Safety, Convenience, and Amenity of the Residents

The proposed development would serve the safety, convenience and amenity of site residents by providing pedestrian-friendly, transit-oriented, urban-style housing options in a development with excellent transit access, extensive streetscaping and open spaces, and the convenience of on-site retail. The Applicant cannot commit to specific pedestrian-safety measures along Glenallan Avenue because of the need for county approval, but the evidence establishes a clear intent to work with the appropriate agencies to develop measures such as pedestrian crossing signals to allow site residents to make use of their convenient Metro access safely, and to allow area residents to access the subject site safely.

4. Compatibility

As discussed in detail in Part V.A.(b)1. above, the Hearing Examiner concludes that with the exception of traffic impact, the proposed development would be compatible with land uses in the surrounding area.

- (c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.***

The Applicant presented ample evidence that the internal vehicular and pedestrian circulation systems, which are proposed with an extensive network of interconnected streets and sidewalks, would be safe, adequate and efficient. Less definite information is available about points of external access because these would require county and state approvals. However, the Development Plan proposes points of external access that, if approved, would be safe, adequate and efficient, and there is no evidence to suggest that they would not be approved.

- (d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.***

The site's limited natural resources include a stream fragment in the northern corner, surrounded by a partially forested and partially built area, and a number of trees in various locations throughout the site. The proposed Development Plan would remove all structures and impervious surfaces from an environmental buffer around the stream, which is the most environmentally sensitive portion of the site. The preliminary forest conservation plan, which has won the approval of Environmental Planning Staff at the MNCPPC, provides for the removal of most of the significant specimen trees on site, but requires many more trees to be planted in the environmental buffer area, where they can contribute to improving the health of the stream, and as street trees throughout the site. Moreover, most of the trees that qualify as "forest" would be preserved. The Applicant provided extensive documentation and testimony concerning its intention to employ innovative stormwater management techniques to satisfy the County's water resource protection requirements. Stormwater management also would contribute to improving the health of the stream. The Hearing Examiner concludes that the preponderance of the evidence supports an affirmative finding under this provision.

(e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

The Applicant has submitted a written outline of its plans for perpetual maintenance of common areas and quasi-public use space. See Ex. 67(c). This document, which was confirmed by Mr. Roberts' testimony, indicates that an umbrella owners' association (comprised of the owners of residential condominiums, apartment landlords (if any), representatives of townhouses and owners of retail space) will be created to provide the services necessary in an urban, mixed-use environment for perpetual maintenance of common areas and quasi-public use spaces, including cleaning, maintenance, insurance, activities programming and marketing. See *id.* The Hearing Examiner finds the submitted outline and supporting testimony to be adequate and sufficient evidence that common areas and quasi-public use spaces would be adequately maintained in perpetuity.

B. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities.

For the reasons stated in Part III.E. above, the Hearing Examiner agrees with the Planning Board and Technical Staff that the subject application would be in substantial compliance with the recommendations and objectives of the *Glenmont Sector Plan*. Several community members who participated actively in these proceedings, in particular Mr. McAteer and Mr. Bronstein, object fundamentally to the Sector Plan's goal of making Glenmont different from what it has long been: a suburban neighborhood of modest single-family homes and garden apartments in an area with limited retail options, but a great sense of community. Many community members are concerned about bringing in different types of housing and different types of residents. As noted in Part V.A., however, the change represented by the proposed development would carry out a policy decision that the County Council and the Planning Board made in 1997 when the Sector Plan was approved and adopted. Moreover, the Hearing Examiner is persuaded by the preponderance of the evidence that if the traffic impact problem is resolved, the proposed development will turn out to be an asset for the existing Glenmont community, as well as for the new residents.

The evidence supports a conclusion that utilities are adequate to accommodate to the proposed development. The evaluation is more complicated with regard to schools, because the only evidence indicates that the relevant elementary schools are over capacity, and no improvements are

currently provided in the CIP that would alleviate that situation. However, the Council may rely on the fact that under the current Growth Policy capacity test, all clusters in the County are considered to have adequate school capacity to support additional development. Moreover, the school system's director of long-range planning, Bruce Crispell, has opined that the next CIP will provide for improvements that will resolve the elementary school capacity problems in the Kennedy cluster. The Hearing Examiner considers this evidence sufficient, particularly in light of the Council's past practice of relying on the Growth Policy test, to conclude that the public school would be able to accommodate the proposed development without adverse impact on the school system.

The one important public facility area in which the Hearing Examiner finds the evidence lacking is roadways. For the reasons discussed in detail in Part III.F.1 above, the Hearing Examiner finds that the Applicant has not met its burden of demonstrating that the proposed development would not have an adverse impact on the local roadway network. The case law makes clear that an applicant's failure to show that anticipated traffic would be compatible with the surrounding area is a permissible basis to deny a rezoning request. See *Montgomery County v. Laughlin*, 255 Md. 724, 259 A.2d 293 (1969); *Tauber v. Montgomery County*, 244 Md. 332, 223 A.2d 615 (1966); *Montgomery County v. Greater Colesville Citizens Association, Inc.*, 70 Md. App. 374, 521 A.2d 770 (1987).

Considering the public interest in a more general sense, the evidence supports a finding that apart from the traffic impact, the proposed development would serve the public interest by beginning the implementation of the Glenmont revitalization plan put forth in the Sector Plan, and would do so in a way that has every indication of being an asset to the existing neighborhood.

Nonetheless, due to the lack of adequate evidence to demonstrate compatibility with regard to traffic, the Hearing Examiner concludes that approval of the requested zoning reclassifications on the existing record would not be in the public interest.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I reach the conclusions specified below.

A. Development Plan

1. The requested reclassifications to the TS-R Zone are in substantial compliance with the use and density recommended by the *Glenmont Sector Plan*. They do not conflict with the county capital improvements program or any other county plan or policy, except with regard to traffic impacts.

2. The Development Plan would comply with the purposes, standards, and regulations of the TS-R Zone and would provide for the maximum safety, convenience, and amenity of the residents of the development. The Development Plan would be compatible with adjacent development in all respects except with regard to traffic; the evidence is not sufficient to persuade the Hearing Examiner that the proposed development would not have an adverse impact on local traffic conditions.

3. The Development Plan proposes internal vehicular and pedestrian circulation systems and points of external access that would be safe, adequate and efficient.

4. By its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site. Forest conservation requirements under Chapter 22A and requirements for water resource protection under Chapter 19 would be satisfied.

5. The submitted documentation of the intended ownership and method of perpetual maintenance of areas to be used for common or quasi-public purposes is adequate and sufficient.

B. Zoning Request

The Hearing Examiner finds that application of the TS-R Zone at the proposed location at this time would not be proper for the comprehensive and systematic development of the County because of insufficient evidence that the proposed development would not have an adverse effect on local traffic conditions, although the development would satisfy the intent, purposes and standards of the zone requested and would otherwise be compatible and in the public interest.

VII. RECOMMENDATION

I, therefore, recommend that (1) Zoning Application No. G-862, which requests reclassification from the R-T 12.5, R-30 and O-M Zones to the TS-R Zone of 23.9 acres of land located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, in the 13th Election District, consisting of Lots 1 through 49 and Parcels A, B and C in the Glenmont Mews Subdivision; part of Parcel A in the Glenmont Park Subdivision; part of Parcel B in the Glenmont Park subdivision; Parcel C in the Glenmont Park Subdivision; Parcel E in the Glenmont Park Subdivision; Parcel F in the Glenmont Park subdivision; and part of Parcel G in the Glenmont Park Subdivision; and (2) Zoning Application No. G-863, which requests reclassification from the R-30 Zone to the TS-R Zone of 7.0514 acres of land adjacent to the land covered by Application No. G-862, consisting of parts of Parcels A, B and G in the Glenmont Park Subdivision; be **remanded** to the Hearing Examiner to provide the Applicant with the opportunity to present additional evidence (i) concerning traffic conditions at the intersection of Randolph Road and Georgia Avenue, such as a queuing and delay analysis; (ii) to show what steps the Applicant is willing to take to mitigate its traffic impacts, which may include but need not be limited to the at-grade improvements already proposed; and (iii) to demonstrate that the proposed mitigation would prevent adverse traffic impacts on the surrounding area from Stage 1 or the combined Stage 1 and Stage 2 of the proposed Glenmont Metrocenter.

Dated: October 18, 2007

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner